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 Staff: Melissa B. Kraemer
 Staff Report: May 29, 2009
 Hearing Date: June 12, 2009
 Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 1-09-020

APPLICANT: City of Arcata, Environmental Services Dept.

PROJECT LOCATION: Arcata, Humboldt County (APNs 501-042-001 and -008).

PROJECT DESCRIPTION Restore wetland habitat near the margin of Humboldt Bay by 1) reconfiguring approximately 1,634 feet of a channelized reach of Fickle Hill Creek to create an approximately 1,934-foot-long meandering channel that more closely resembles the historic channel alignment; (2) installing 9 to 15 small log/boulder cover structures in the reconfigured channel to increase channel complexity and improve instream habitat; and (3) planting approximately 2.5 acres of native riparian vegetation along the length of the reconfigured channel.

GENERAL PLAN DESIGNATION: Agricultural Exclusive (AE) & Natural Resources (NR).

ZONING DESIGNATION: Agricultural Exclusive (AE) and Natural Resources (NR) with a Wetland and Stream Protection (WSP) Combining Zone Overlay.

OTHER APPROVALS REQUIRED: California Department of Fish and Game CFGC Sec. 1603 Streambed Alteration Agreement No. R1-08-0094 (amendment pending);

SUBSTANTIVE FILE
DOCUMENTS:

North Coast Regional Water Quality Control Board Water Quality Certification (amendment pending);

U.S. Army Corps of Engineers CWA Section 404 Permit No. 27434N (amendment pending).

Arcata Baylands Enhancement/Restoration Project
Mitigated Negative Declaration (SCH #2006042056);

City of Arcata certified Local Coastal Program.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends approval with special conditions of the proposed wetland restoration project.

The project area is located primarily on seasonally grazed, seasonal wetlands between Highway 101 and Old Arcata Road (see Exhibit Nos. 1-2). Historically the area was part of the extensive tidal marshes of Humboldt Bay, which were diked off and converted for agricultural purposes over a century ago. Vegetation in the area consists mostly of actively grazed agricultural grasslands comprised of a mix of native and nonnative grasses and forbs. The existing grazed seasonal wetlands do not support habitat for any sensitive plant or animal species. The existing Fickle Hill creek channel may support limited suitable habitat for sensitive fish species such as coastal cutthroat trout during the winter months when the channel is flowing, but due to the lack of riparian cover, stream sinuosity, and instream habitat features, the existing channel currently does not provide sufficient suitable rearing habitat for threatened juvenile salmonids such as coho salmon, Chinook salmon, and steelhead. The existing creek typically dries out completely during the summer months, and cattle graze within and around the stream banks and bottom.

Fickle Hill Creek is an intermittent stream (dries out in the summer months) that runs through the Arcata Baylands project area. Fickle Hill Creek is a tributary to Beith Creek, which flows into Gannon Slough before entering Humboldt Bay. Restoration of Beith Creek and Gannon Slough has been implemented through a series of projects managed by the City since 2003. Since the City installed a fish-friendly tidegate on Gannon Slough in 2006 (under CDP No. 1-05-017), coho and other salmonids have been detected in the lower watershed. The tidegate allows muted tidal exchange to influence the lower reach of Fickle Hill Creek downstream of the project area, enhancing its estuarine function. In general, the Fickle Hill Creek channel historically was dredged, straightened, and bermed, significantly changing its original configuration. The channel also lacks instream structure and riparian cover, in part due to the presence of cattle along and within the watercourse banks.

Using the 1870 U.S. Coast Survey Historic Map as a reference, the City proposes to construct channel meanders along an approximately 1,634-foot-long reach of Fickle Hill Creek (see Exhibit Nos. 4 and 5). The proposed stream channel reconfiguration is intended to provide a more natural channel configuration and would result in a final channel length of approximately 1,934 feet. The City would remove approximately 1,285 cubic yards of material to create the new channel, and place approximately 1,051 cubic yards of excavated material into the

abandoned (existing) channel. Two culverts also would be removed from the abandoned channel. Sod scraped from the excavation areas would be stored and used to revegetate the filled channel areas to maintain the existing site vegetation. The existing channel would be filled to the same level as the surrounding grazed seasonal wetlands, and where it is not proposed to be planted with riparian habitat, the filled channel would be converted to grazed seasonal wetland habitat. Approximately 235 cubic yards of excess fill would be hauled off site to either be used at the McDaniel Slough project (authorized by CDP No. 1-06-036) or disposed of at a City-owned rock quarry. The City would use bulldozers, excavators, loaders, scrapers, and transport vehicles to carry out the proposed amended development. In addition to the channel reconfiguration, the City proposes to place 9 to 15 cover structures within the reconfigured channel to increase channel complexity and improve instream habitat. The cover structures would consist of small logs and boulders anchored into the creek banks. The City also proposes to plant a total of 2.5 acres of native riparian vegetation along the length of the reconfigured channel. Native trees, including red alder (*Alnus rubra*) and Sitka spruce (*Picea sitchensis*), would be planted on 10- to 15-foot centers. Native shrubs, including wax myrtle (*Morella californica*) and red flowering currant (*Ribes sanguineum*), would be interspersed throughout the revegetation area. Concurrent with planting, the City proposes to remove invasive, nonnative plants. Finally, the City proposes to install 1,200 linear feet of temporary, woven wire fencing to protect the vegetation from grazing cattle. The temporary fencing would consist of 7-foot steel T-posts spaced 10 feet apart and driven into the ground approximately 30 inches with no soil removed. The fencing would be removed once the vegetation has matured enough to withstand cattle impacts (perhaps as soon as five years).

The proposed development would result in the creation of 0.3-acre of additional ephemeral (intermittent) instream habitat and would lengthen the channel reach by 300 feet. The City maintains that the proposed work would restore juvenile salmonid winter rearing habitat through the restoration of stream sinuosity, instream habitat cover, and riparian habitat on Fickle Hill Creek. The City also maintains that the project would increase flood capacity by the lengthening of the creek channel and increase connectivity of riparian habitat available for the nesting, wintering, and stopover of waterfowl and passerines.

The proposed channel realignment will reestablish approximately the same configuration of channelized wetland habitat that historically existed in the area prior to the channeling, straightening, and berming of the creek for flood control and agricultural use purposes. Furthermore, the proposed project will restore juvenile salmonid winter rearing habitat by restoring stream sinuosity, increasing cover (via the proposed placement of log/boulder cover structures), and enhancing riparian habitat along the creek. Scientific research has shown that juvenile coho salmon rearing in seasonal streams such as Fickle Hill Creek exhibit relatively high growth rates and tend to emigrate as larger smolts. Thus, the proposed development entails actions taken in converted or degraded natural wetlands (channelized and straightened creek reach) that will result in the reestablishment of landscape-integrated ecological processes associated with the stream habitat. Therefore, staff believes that the proposed channel and instream habitat restoration are consistent with the definition of restoration and constitute filling and dredging for restoration purposes consistent with Section 30233(a)(6).

Planting the 2.5-acre riparian restoration area as proposed (with red alder, Sitka spruce, wax myrtle, and red-flowering currant) will benefit both terrestrial and marine-associated organisms, including threatened marine salmon species. The riparian restoration is proposed adjacent to Fickle Hill Creek, which historically was tidally influenced and continues to maintain tidal flux in its lower reach. Marine riparian zones serve similar functions to those described for freshwater systems and are likely to provide additional functions unique to nearshore ecosystems (Brennan & Culverwell 2004). Riparian areas contribute important organic debris that is transformed into nutrients, which support the marine food web. Wood, leaf litter, and other organic matter from riparian areas provide nutrients for life at the base of the food web. Riparian vegetation supports insects and other prey resources, which are eaten by juvenile salmon and other fish and wildlife. Riparian vegetation also provides cover – both for shade and protection purposes – for aquatic species such as salmonids, which need cool water temperatures for growth and survival and protection from predators such as egrets and herons. Riparian areas capture contaminants; by absorbing or filtering contaminated stormwater runoff, soils and vegetation in marine riparian areas can prevent pollutants from entering coastal waters. Healthy riparian areas support rich and diverse communities of animals that depend on the areas for feeding, breeding, refuge, movement, and migration. Salmonids and many other fish species feed on insects from marine riparian areas. If these areas are altered or eliminated, the food supply and, thus, the abundance of nearshore fish is likely to be reduced. Importantly, riparian areas serve as buffers for human health and safety. The marine riparian functions of water quality, soil stability, and the ability to absorb the impacts of storm surges and other natural, physical assaults on shorelines have direct benefits to humanity. Flooding and storm events can be exacerbated in the absence of marine riparian areas, which can serve as protective buffers.

Thus, the restoration of riparian habitat in the Humboldt Bay area is integral to maintaining optimum populations of marine organisms and for the protection of human health, as is mandated by Section 30231.

Although the proposed riparian restoration will not necessarily reestablish the exact same configuration of wetland habitat that historically existed in the area, the proposed enhancements and restoration of freshwater wetlands entail actions taken in converted or degraded natural wetlands that will result in the reestablishment of landscape-integrated ecological processes associated with wetland habitats. Therefore, staff believes that the proposed restoration is consistent with the definition of restoration and constitute filling and dredging for restoration purposes consistent with Section 30233(a)(6). In addition, staff believes the proposed restoration is consistent with the mandates of Sections 30230 and 30231 of the Coastal Act that marine resources and the biological productivity of coastal waters shall be maintained and enhanced.

Although the project would maintain and enhance marine resources and the biological productivity of coastal waters, the project would convert 2.5 acres of agricultural (grazing) land inconsistent with the provisions of Sections 30241 and 30242 of the Coastal Act. However, staff believes that to not approve the project would result in a failure to maintain and enhance marine resources and the biological productivity of coastal wetlands and waters that would be inconsistent with the mandates of Sections 30230 and 30231. In addition, it is the very essence of the project, not an ancillary amenity offered as a trade-off, that is both inconsistent with

certain Chapter 3 policies and yet also necessary restoration. Finally, staff examined alternatives to the proposed project including (1) alternative sites; (2) alternative configurations of project features; and (3) the no-project alternative. Staff believes that there is no less environmentally damaging feasible alternative to the development as conditioned, as required by Section 30233(a) of the Coastal Act.

Therefore, staff believes the proposed project presents a true conflict between Sections 30241 and 30242 and Sections 30230 and 30231 of the Coastal Act, and staff believes that it is appropriate for the Commission to invoke the conflict resolution policies of Section 30007.5 of the Coastal Act. Staff believes that the impacts on coastal resources from not constructing the project would be more significant than the project's agricultural impacts and would be inconsistent with the mandates of Sections 30230 and 30231 to maintain and enhance marine resources and the biological productivity of coastal waters.

To ensure that the maintenance and enhancement of marine resources and biological productivity envisioned by the project that enables the Commission to use the balancing provision of Section 30007.5 and to characterize the development as filling and dredging for "restoration purposes" pursuant to Section 30233(a)(6) are achieved, staff recommends Special Condition No. 1. Special Condition No. 1 would require the applicants to submit a final monitoring plan to outline a method for measuring and documenting the improvements in habitat value and diversity at the site over the course of five years following project completion. Furthermore, Special Condition No. 1 would require the monitoring plan to include provisions for remediation to ensure that the goals and objectives of the restoration project are met.

Overall, the project would restore and enhance wetland habitat values and would produce generally beneficial environmental effects. However, depending on the manner in which the proposed project is conducted, significant adverse impacts could result, including (1) impacts to marine resources and wildlife habitat from water pollution in the form of sedimentation or debris entering coastal waters and wetlands; (2) introduction (through re-planting) of exotic invasive plants species that could compete with native vegetation and negate the habitat improvements they would provide; (3) use of certain rodenticides that could deleteriously bio-accumulate in predator bird species; (4) impacts to adjacent seasonal wetlands from construction activities; and (5) stranding of fish in the channel during reconstruction of the channel. Therefore, staff recommends Special Condition Nos. 2 through 5 to ensure that potentially significant adverse impacts are minimized. Special Condition No. 2 would require the applicants to undertake the development pursuant to certain construction responsibilities. Special Condition No. 3 would require the applicants to submit a final erosion and runoff control that is to include certain specified water quality best management practices for minimizing impacts to coastal waters. Special Condition No. 4 would prohibit the planting of any plant species listed as problematic and/or invasive and contains a prohibition on the use of anticoagulant-based rodenticides. Finally, Special Condition No. 5 would require submittal of a final equipment staging and stockpiling plan, which designates areas for equipment staging and the temporary stockpiling of construction and fill materials. Staff believes that without Special Condition Nos. 1 through 5, the proposed project could not be approved pursuant to Section 30007.5 of the Coastal Act.

Therefore, staff believes that as conditioned, the proposed development is consistent with all applicable Chapter 3 policies of the Coastal Act.

The Motion to adopt the Staff Recommendation is found on Page 6.

STAFF NOTES

1. Jurisdiction & Standard of Review

The project site is located in the Commission's retained permit jurisdiction. The City of Arcata has a certified Local Coastal Program (LCP), but the site is within an area shown on State Lands Commission maps over which the State retains a public trust interest. Therefore, the standard of review that the Commission must apply to the project is the Chapter 3 policies of the Coastal Act.

I. MOTION, STAFF RECOMMENDATION, & RESOLUTION

The staff recommends that the Commission adopt the following resolution:

Motion:

I move that the Commission approve Coastal Development Permit No. 1-09-020 pursuant to the staff recommendation.

Staff Recommendation of Approval:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Approve Permit with Conditions:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS: See Appendix A.

III. SPECIAL CONDITIONS:

1. Final Restoration Monitoring Program

(A). **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. 1-09-020**, the applicant shall submit for review and approval of the Executive Director, a final detailed restoration monitoring program designed by a qualified biologist for monitoring of the stream restoration site. The monitoring program shall at a minimum include the following:

1. Performance standards that will assure achievement of the restoration goals and objectives set forth in Coastal Development Permit Application No. 1-09-020 as summarized in the Findings IV.B, "Project Description," including, but not limited to, the restoration of (a) the historic channel configuration of Fickle Hill Creek, (b) instream habitat cover in the reconfigured channel, (c) 2.5 acres of native riparian vegetation; and (d) seasonal wetlands along the old channel alignment.
2. Provisions for monitoring at least the following attributes: increased usage of the reconfigured creek areas by (a) over-wintering juvenile salmonids; (b) waterfowl and passerines; and (c) other aquatic and water-associated wildlife.
3. Provisions for submittal within 30 days of completion of the initial restoration work of (a) "as built" plans demonstrating that the initial restoration work has been completed in accordance with the approved restoration program, and (b) an assessment of the initial biological and ecological status of the "as built" enhancements. The assessment shall include an analysis of the attributes that will be monitored pursuant to the program, with a description of the methods for making that evaluation.
4. Provisions to ensure that the restoration site will be remediated within one year of a determination by the permittee or the Executive Director that monitoring results indicate that the site does not meet the goals, objectives, and performance standards identified in the approved restoration program and in the approved final monitoring program.
5. Provisions for monitoring and remediation of the restoration site in accordance with the approved final restoration program and the approved final monitoring program for a period of five (5) years.
6. Provisions for submission of annual reports of monitoring results to the Executive Director by October 1 each year for the duration of the required monitoring period, beginning the first year after submission of the "as-built" assessment. Each report shall include copies of all previous reports as appendices. Each report shall also include a "Performance Evaluation" section where information and results from the monitoring program are used to evaluate the status of the stream restoration project in relation to the performance standards.

7. Provisions for submission of a final monitoring report to the Executive Director at the end of the five-year reporting period. The final report must be prepared in conjunction with a qualified biologist. The report must evaluate whether the restoration site conforms with the goals, objectives, and performance standards set forth in the approved final restoration program. The report must address all of the monitoring data collected over the five-year period.
- (B). If the final report indicates that the restoration project has been unsuccessful, in part, or in whole, based on the approved goals and objectives set forth in Coastal Development Permit Application No. 1-09-020 as summarized in Findings IV.B “Project Description,” the applicant shall submit a revised or supplemental restoration program to compensate for those portions of the original program which did not meet the approved goals and objectives set forth in Coastal Development Permit Application No. 1-09-020 as summarized in Finding IV.B “Project Description.” The revised restoration program shall be processed as an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
 - (C). The permittee shall monitor and remediate the restoration site in accordance with the approved monitoring program. Any proposed changes from the approved monitoring program shall be reported to the Executive Director. No changes to the approved monitoring program shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines no amendment is legally required.

2. Construction Responsibilities

The permittee shall comply with the mitigation measures listed in the Mitigated Negative Declaration (MND) completed for the project (SCH No. 2006042056), including the March 29, 2009 addendum to the MND, except as modified herein. Construction-related requirements shall include, but shall not be limited to, the following Best Management Practices:

- (A). No construction materials, debris, or waste shall be placed or stored where it may be subject to entering coastal waters or wetlands, except within staging areas approved pursuant to Special Condition No. 5;
- (B). Any and all debris resulting from construction activities shall be removed from the project site and disposed of at an authorized disposal location within 10 days of project completion and/or prior to the onset of the rainy season, whichever is earlier;
- (C). All grading activities shall be conducted during the dry season period of June 15 through November 15; any grading activity conducted between October 16 and November 15 shall be subject to the following conditions:
 1. All work shall cease upon the onset of precipitation at the project site and shall not recommence until the predicted chance of rain is less than 30 percent for the Arcata area portion of the Redwood Coast segment of the National Weather Service’s forecast for Northwestern California;

2. The work site(s) shall be winterized between work cessation periods by installing stormwater runoff and erosion control barriers around the perimeter of each construction site to prevent the entrainment of sediment into coastal waters;
 3. Adequate stocks of stormwater runoff and erosion control barrier materials shall be kept onsite and made available for immediate use.
- (D). No construction shall occur within tidal waters or flowing stream channels;
- (E). If rainfall is forecast during the time construction activities are being performed, any exposed soil areas shall be promptly mulched or covered with plastic sheeting and secured with sand bagging or other appropriate materials before the onset of precipitation;
- (F). Any debris discharged into coastal waters shall be recovered immediately and disposed of properly;
- (G). Upon completion of construction activities and prior to the onset of the rainy season, all bare soil areas shall be seeded in compliance with Special Condition No. 4, mulched with weed-free rice straw, and/or replaced with sod consistent with subsection (J) below;
- (H). Any fueling and maintenance of construction equipment shall occur within upland areas outside of environmentally sensitive habitat areas or within designated staging areas. Mechanized heavy equipment and other vehicles used during the construction process shall not be stored or re-fueled within 300 feet of coastal waters;
- (I). Fuels, lubricants, and solvents shall not be allowed to enter the coastal waters or wetlands. Hazardous materials management equipment including oil containment booms and absorbent pads shall be available immediately on-hand at the project site, and a registered first-response, professional hazardous materials clean-up/remediation service shall be locally available on call. Any accidental spill shall be rapidly contained and cleaned up;
- (J). The top six to ten inches (6-10") of excavated material within grazed seasonal wetlands (i.e., the new reconfigured creek channel) shall be separately stockpiled by the contractor, and the contractor shall assure that this stockpiled soil material is kept moist and that the material is reintroduced as soon as possible to excavation as the top fill material in the old creek channel; and
- (K). Prior to the commencement of construction, the work area shall be delineated, limiting the potential area affected by construction and workers shall be educated about the limitations on construction. All vehicles and equipment shall be restricted to pre-established work areas and established or designated access routes.

3. Erosion & Runoff Control Plan

- (A). **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. 1-09-020**, the applicant shall submit, for review and approval of the Executive Director, a plan for erosion and run-off control.
1. The plan shall demonstrate the following:

- (a). Run-off from the project site shall not increase sedimentation in coastal waters or wetlands;
 - (b). Run-off from the project site shall not result in pollutants entering coastal waters or wetlands;
 - (c). Best Management Practices (BMPs) shall be used to prevent the entry of polluted stormwater runoff into coastal waters or adjacent wetlands during construction, including use of relevant best management practices (BMPs) as detailed in the “California Storm Water Best Management (Construction and Industrial/Commercial) Handbooks, developed by Camp, Dresser & McKee, *et al.* for the Storm Water Quality Task Force; see <http://www.cabmphandbooks.com>);
 - (d). An on-site spill prevention and control response program, consisting of best management practices (BMPs) for the storage of clean-up materials, training, designation of responsible individuals, and reporting protocols to the appropriate public and emergency services agencies in the event of a spill, shall be implemented at the project to capture and clean-up any accidental releases of oil, grease, fuels, lubricants, or other hazardous materials from entering coastal waters or wetlands; and
 - (e). The erosion and runoff control plan shall be consistent with the provisions of Special Condition No. 2 (Construction Responsibilities) and all other terms and conditions of Coastal Development Permit No. 1-09-020.
2. The plan shall include, at a minimum, the following components:
- (a). A schedule for installation and maintenance of appropriate construction source-control BMPs to prevent entry of stormwater runoff into the construction site and the entrainment of excavated materials into run-off leaving the construction site; and
 - (b). A schedule for installation, use, and maintenance of appropriate construction materials handling and storage BMPs to prevent the entry of polluted stormwater runoff from the completed development into coastal waters.
- (B). The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

4. Restoration Site Revegetation

The restoration area along the reconfigured creek channel shall be revegetated as proposed and shall comply with the following standards and limitations:

- (A). Only native plant species shall be planted. All proposed plantings shall be obtained from local genetic stocks within Humboldt County. If documentation is provided to the Executive Director that demonstrates that native vegetation from local genetic stock is not available, native vegetation obtained from genetic stock outside of the local area may be used. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California, shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “noxious weed” by the governments of the State of California or the United States shall be utilized within the property.
- (B). All planting shall be completed within 60 days after completion of construction.
- (C). The use of rodenticides containing any anticoagulant compounds, including, but not limited to, Bromadiolone, Brodifacoum or Diphacinone shall not be used.
- (D). All proposed plantings shall be maintained in good growing conditions throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plan.

5. Final Debris Disposal and Equipment Access, Staging, & Stockpiling Plans

- (A). **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. 1-08-011**, the applicant shall submit, for review and approval of the Executive Director, a final plan detailing the locations of site construction activities, equipment access, and materials storage and staging areas, as well as proposed disposal locations.
 - 1. The final plan shall demonstrate the following:
 - (a). No excavated materials to be removed shall be temporarily placed or stored during grading activities where it may be subject to entering wetlands or other coastal waters, except within designated staging areas;
 - (b). Erosion control techniques shall be implemented around the temporarily stored spoil material;
 - (c). All of the fill to be removed shall either be: (i) placed and used pursuant to and consistent with a valid coastal development permit, as well as consistent with the terms and conditions of this permit (CDP No. 1-09-020); or (ii) disposed of at an authorized disposal site capable of receiving such fill materials (e.g., CDP 1-03-004, Reclamation District No. 768, Applicant; or CDP No. 1-06-036, City of Arcata, Applicant). Side casting or placement of any such material within Arcata Bay, any slough, waterway, streamcourse, or lake, or any other wetland area, including any grazed seasonal wetlands, except as specified above is prohibited;
 - (d). Excavated materials removal activities shall not occur during the rainy season consistent with Special Condition No. 2;

- (e). All staging and stockpiling areas to be located in seasonal wetlands shall be limited to a 20-foot-wide strips along both sides of the existing and reconfigured channels; and
 - (f). Upon completion of project activities in the area and prior to November 15 of each year, all temporarily disturbed seasonal wetlands (including but not limited to temporary staging areas, stockpiling areas, and access roads) shall be decompacted and reseeded, as needed, with a mix of regionally appropriate native grasses and/or noninvasive agricultural species. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California, shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “noxious weed” by the governments of the State of California or the United States shall be utilized within the property.
2. The plan shall include, at a minimum, the following components:
- (a). A site plan drawn to scale showing all proposed locations for equipment access, staging, and stockpiling of materials, debris, and waste;
 - (b). A schedule for removal of all debris; and
 - (c). A narrative plan describing all proposed measures for restoring seasonal wetland areas disturbed by temporary access roads and staging and stockpiling areas.
- (B). The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

6. Protection of Archaeological Resources

- (A). If an area of historic or prehistoric cultural resources or human remains are discovered during the course of the project, all construction shall cease and shall not recommence except as provided in subsection (B) hereof, and a qualified cultural resource specialist shall analyze the significance of the find.
- (B). A permittee seeking to recommence construction following discovery of the cultural deposits shall submit an archaeological plan for the review and approval of the Executive Director.
 - 1. If the Executive Director approves the Archaeological Plan and determines that the Archaeological Plan’s recommended changes to the proposed development or mitigation measures are *de minimis* in nature and scope, construction may recommence after this determination is made by the Executive Director.

2. If the Executive Director approves the Archaeological Plan but determines that the changes therein are not *de minimis*, construction may not recommence until after an amendment to this permit is approved by the Commission.

7. California Department of Fish & Game Approval

PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. 1-09-020, the applicant shall provide to the Executive Director a copy of a permit or permit amendment issued by the California Department of Fish and Game, or evidence that no permit is required. The applicant shall inform the Executive Director of any changes to the project required by the Department. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

8. Regional Water Quality Control Board Approval

PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. 1-09-020, the applicant shall provide to the Executive Director a copy of a permit or permit amendment issued by the North Coast Regional Water Quality Control Board, or evidence that no permit is required. The applicant shall inform the Executive Director of any changes to the project required by the Board. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

9. U.S. Army Corps of Engineers Approval

PRIOR TO COMMENCEMENT OF ANY CONSTRUCTION, the permittee shall provide to the Executive Director a copy of a permit or permit amendment issued by the Army Corps of Engineers, or letter of permission, or evidence that no permit or permission is required. The applicant shall inform the Executive Director of any changes to the project required by the Army Corps of Engineers. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

10. State Lands Commission Review

PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. 1-09-020, the applicant shall provide to the Executive Director a written determination from the State Lands Commission that:

- (A). No State or public trust lands are involved in the development; or
- (B). State or public trust lands are involved in the development and all permits required by the State Lands Commission have been obtained; or
- (C). State or public trust lands may be involved in the development, but pending a final determination an agreement has been made with the State Lands Commission for the

approved project as conditioned by the Commission to proceed without prejudice to that determination.

11. Grazed Seasonal Wetland Vegetation Monitoring

Within 18 months of completion of development authorized by CDP No. 1-09-020, the permittee shall submit, for the review and written approval of the Executive Director, a vegetation monitoring report prepared by a qualified biologist or botanist which evaluates whether the objective of reestablishing vegetation in all portions of the project area designed to re-established as seasonal wetland areas (diked former tidelands) to a level of coverage and density equivalent to vegetation coverage and density of the surrounding undisturbed areas has been achieved. If the report indicates that the revegetation of any of the disturbed areas, including the temporary access roads and staging areas, has not been successful, in part or in whole, the permittee shall submit a revised revegetation program to achieve the objective. The revised revegetation program shall require an amendment to Coastal Development Permit No. 1-09-020.

IV. FINDINGS & DECLARATIONS

The Commission hereby finds and declares as follows:

A. Background & Environmental Setting

The proposed project is part of a larger project effort known as the “Arcata Baylands Project,” which was designed to protect, restore, and enhance freshwater habitats adjacent to northern Humboldt Bay. The project area is part of the larger Humboldt Bay ecosystem that accommodates fish, waterfowl, wading birds, shorebirds, passerines, raptors, and other water-associated wildlife (Exhibit Nos. 1 and 2). Humboldt Bay is second only to San Francisco Bay in the numbers and variety of migratory water-associated birds wintering in the coastal segment of the Pacific Flyway of California. The bay is one of California’s most important stopovers for dozens of species of migrating birds, which use the area for nesting, feeding, and resting. Over 200 species of birds (18 of them State-listed as “endangered” or “species of special concern”) have been recorded in and around the project vicinity.

The 588-acre property on which the project is located is part of a larger conservation protection and enhancement effort in the Humboldt Bay region designed to help establish a connectivity of habitat encompassing over 1,300 acres of locally-, state-, and federally-protected lands adjacent to the northern edge of Humboldt Bay (Arcata Bay). The project lands are owned and managed by the City in perpetuity for the conservation of coastal wetland habitats and the wildlife resources that depend on them. The project area is adjacent to or near a suite of protected lands including the Humboldt Bay National Wildlife Refuge, the 225-acre Arcata Marsh and Wildlife Sanctuary, the 508-acre California Department of Fish and Game (CDFG) Mad River Slough Wildlife Area, and lands owned and managed for conservation by the Jacoby Creek Land Trust. Additional restoration efforts that the applicant has undertaken in the project vicinity over the past six years include the following:

- CDP No. 1-03-031: In November of 2003 the Commission approved this permit for the City to construct cattle exclusion fencing to enclose an 8.7-acre area along a 2,537-foot reach of lower Campbell Creek/Gannon Slough, a tributary to Humboldt Bay, and re-vegetate the enclosed area with native plants to result in substantial water quality improvement and restoration of terrestrial and aquatic habitat diversity along the lower reaches of the watercourse.
- CDP No. 1-05-017: In June of 2005 the Commission approved this permit for the City to restore several creeks and sloughs by: 1) improving riparian habitat, increasing canopy cover, providing future large woody debris recruitment for salmonids by realigning a 910-foot reach of Campbell Creek currently flowing through an artificial drainage ditch adjacent to Highway 101; 2) repairing an existing and non-functioning tidegate structure separating Gannon Slough from Humboldt Bay and replacing it with a side-hinged gate with a muted opening to provide access for anadromous salmonids; 3) providing enhanced floodplain and fish habitat structure by restoring a definable channel along an 850-foot reach of Beith Creek; and 4) installing livestock exclusion fencing and planting native trees and shrubs on both Campbell and Beith Creeks. The project was designed to restore terrestrial and aquatic habitat diversity along the lower reaches of the watercourses. In August of 2006 the Commission approved an amendment to the permit (CDP Amendment No. 1-05-017-A1) to extend the floodplain rehabilitation work on Beith Creek an additional 1,454 feet downstream from the previous bounds of the originally-approved project area to the confluence with Gannon Slough to further restore terrestrial and aquatic habitat diversity along the lower creek reaches.
- CDP No. 1-06-036: In June of 2007 the Commission approved this permit for the City to restore and enhance wetland function to 240 acres of reclaimed former tidal salt/brackish marsh to a combination of 205 acres of intertidal salt marsh wetlands and 35 acres of impounded freshwater and brackish wetlands by: 1) excavating the pond areas; 2) deepening approximately 5,200 lineal feet of existing slough channels within the reclaimed area; 3) constructing approximately 21,000 lineal feet of flood, eco-levee, and pond perimeter levees around the periphery of the project component areas; 4) removing a total of approximately 1,200 lineal feet of portions of the existing flood control levees along the lower reaches of McDaniel Slough to form roosting islands out of the remnant portions of the levees; 5) breaching the reclamation levee separating the project site from Arcata Bay at two locations to form muted tidal openings to provide access for anadromous salmonids, tidewater goby, and other marine fish species; 6) planting appropriate elevation-specific native saltmarsh plants on the inner faces of the eco levees; and 7) developing pedestrian and bicycle trail segments along the pond perimeters and out to the reclamation levee breach site.
- CDP No. 1-08-011: In August of 2008 the Commission approved the permit for the City to enhance four seasonal freshwater wetland areas totaling 12.4 acres and to install water-control structures to allow for continued seasonal agricultural grazing in the affected areas. The project was designed to provide habitat benefits for waterfowl, shorebirds, and other water-associated wildlife while maintaining agricultural and Aleutian Cackling

Goose habitat. The project included enhancing an existing seasonal wetland area surrounding a portion of Fickle Hill Creek upstream of the proposed project area

The City's landscape-level management approach seeks to provide a diverse complex of habitat types in the northern Humboldt Bay area. See Exhibit No. 3 for the location of the proposed project in relation to these other protected lands.

The project area is located primarily on seasonally grazed, seasonal wetlands between Highway 101 and Old Arcata Road (Exhibit Nos. 1-2). Historically the area was part of the extensive tidal marshes of Humboldt Bay, which were diked off and converted for agricultural purposes over a century ago. Vegetation in the area consists mostly of actively grazed agricultural grasslands comprised of a mix of native and nonnative grasses and forbs. The existing grazed seasonal wetlands do not support habitat for any sensitive plant or animal species. The existing Fickle Hill creek channel may support limited suitable habitat for sensitive fish species such as coastal cutthroat trout during the winter months when the channel is flowing, but due to the lack of riparian cover, stream sinuosity, and instream habitat features, the existing channel currently does not provide much suitable rearing habitat for threatened juvenile salmonids such as coho salmon, Chinook salmon, and steelhead. The existing creek typically dries out completely during the summer months, and cattle graze within and around the stream banks and bottom.

The project area is inundated with stormwater runoff each winter and has such saturated soils that much of the area is not available for grazing for five to seven months each year, depending on rainfall. In the summer these areas are grazed by cattle. The City currently leases the project area properties to three ranchers who will continue to ranch the area post implementation of the proposed development. The area soils have been classified as Ba3 – Bayside Silty Clay Loam (McLaughlin & Harradine 1965), poorly to imperfectly drained. More recently the soils have been classified as 140 – Occidental, 0-2% slopes, very poorly drained (NRCS 2009). No prime agricultural soils occur within the Baylands project area.

Fickle Hill Creek is an intermittent stream (dries out in the summer months) that runs through the Arcata Baylands project area. Fickle Hill Creek is a tributary to Beith Creek, which flows into Gannon Slough before entering Humboldt Bay (Exhibit No. 2). As mentioned above, restoration of Beith Creek and Gannon Slough has been implemented through a series of projects managed by the City since 2003. Since the City installed a fish-friendly tidegate on Gannon Slough in 2006 (under CDP No. 1-05-017), coho and other salmonids have been detected in the lower watershed. The tidegate allows muted tidal exchange to influence the lower reach of Fickle Hill Creek downstream of the project area, enhancing its estuarine function. In general, the Fickle Hill Creek channel historically was dredged, straightened, and bermed, significantly changing its original configuration. The channel also lacks instream structure and riparian cover, in part due to the presence of cattle along and within the watercourse banks.

Project area zoning under Arcata's certified LCP is both Agriculture Exclusive (AE) and Natural Resources (NR) with a Wetland and Creek Protection Overlay Zone. The area is within the 100-year FEMA floodplain. With the exception of Highway 101's Class II bike lanes, there are no coastal access and recreational amenities for hiking, cycling, bird-watching, and boating in the

immediate project vicinity. However, numerous such activities centered around Arcata Bay and its saltwater tidal margins are available nearby at the Arcata Marsh and Wildlife Sanctuary, the Butcher Slough Restoration Project, the Arcata Marsh Interpretative Center, and the Department of Fish and Games Mad River Slough Restoration Area, across Highway 101 to the west and south of State Route 255, along the northern shoreline of the bay.

B. Description of Proposed Development

Using the 1870 U.S. Coast Survey Historic Map as a reference, the City proposes to construct channel meanders along an approximately 1,634-foot-long reach of Fickle Hill Creek (Exhibit Nos. 4 and 5). The proposed stream channel reconfiguration is intended to provide a more natural channel configuration and would result in a final channel length of approximately 1,934 feet. The City would remove approximately 1,285 cubic yards of material to create the new channel, and place approximately 1,051 cubic yards of excavated material into the abandoned (existing) channel. Two culverts also would be removed from the abandoned channel. Sod scraped from the excavation areas would be stored and used to revegetate the filled channel areas to maintain the existing site vegetation. The existing channel would be filled to the same level as the surrounding grazed seasonal wetlands, and where it is not proposed to be planted with riparian habitat, the filled channel would be converted to grazed seasonal wetland habitat. Approximately 235 cubic yards of excess fill would be hauled off site to either be used at the McDaniel Slough project (authorized by CDP No. 1-06-036) or disposed of at a City-owned rock quarry. The City would use bulldozers, excavators, loaders, scrapers, and transport vehicles to carry out the proposed amended development. In addition to the channel reconfiguration, the City proposes to place 9 to 15 cover structures within the reconfigured channel to increase channel complexity and improve instream habitat. The cover structures would consist of small logs and boulders anchored into the creek banks. The City also proposes to plant a total of 2.5 acres of native riparian vegetation along the length of the reconfigured channel. Native trees, including red alder (*Alnus rubra*) and Sitka spruce (*Picea sitchensis*), would be planted on 10- to 15-foot centers. Native shrubs, including wax myrtle (*Morella californica*) and red flowering currant (*Ribes sanguineum*), would be interspersed throughout the revegetation area. Concurrent with planting, the City proposes to remove invasive, nonnative plants. Finally, the City proposes to install 1,200 linear feet of temporary, woven wire fencing to protect the vegetation from grazing cattle. The temporary fencing would consist of 7-foot steel T-posts spaced 10 feet apart and driven into the ground approximately 30 inches with no soil removed. The fencing would be removed once the vegetation has matured enough to withstand cattle impacts (perhaps as soon as five years).

The proposed development would result in the creation of 0.3-acre of additional ephemeral (intermittent) instream habitat and would lengthen the channel reach by 300 feet. The City maintains that the proposed work would restore juvenile salmonid winter rearing habitat through the restoration of stream sinuosity, instream habitat cover, and riparian habitat on Fickle Hill Creek. The City also maintains that the project would increase flood capacity by the lengthening of the creek channel and increase connectivity of riparian habitat available for the nesting, wintering, and stopover of waterfowl and passerines.

The City proposes to minimize impacts to seasonal wetlands, agricultural lands, and water quality in the project area through the following mitigation measures:

- Construction activities would only occur between June 15th and October 31st to avoid or minimize soil compaction and sediment transport;
- In the event of unseasonable rainfall, construction would not occur during periods when any surface runoff occurs on exposed soil due to rainfall;
- All exposed soils that could erode into creek channels would be seeded, mulched with weed-free straw mulch, or have sod replaced;
- No equipment would operate directly within tidal waters or flowing stream channels;
- No construction materials, debris, or waste would be placed or stored where it could enter or be washed by rainfall into coastal waters;
- Sediment controls would be in place for work occurring in or near creeks; and
- Equipment refueling and maintenance would take place only in designated areas where potential spills of fuel, lubricants, or coolants could be contained and cleaned up without impacts to aquatic habitats.

The City proposes to use an approximately 20-foot-wide area around the length of the existing channel and the proposed reconfigured channel for the construction work area and the temporary stockpiling of sod during excavation.

In addition, the Commission notes that the applicant has been or will be obtaining several other permits and associated authorizations for the project from other agencies that have or will contain terms and conditions for avoiding or minimizing impacts to coastal resources and the environment (see “Other Approvals” listed on page 2).

C. Restoration of Marine Resources, Biological Productivity, and Permissible Filling, Dredging, & Diking of Wetlands

1. Applicable Coastal Act Policies & Standards

Coastal Act Section 30230 states as follows:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes. [Emphasis added.]

Coastal Act Section 30231 states as follows:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff,

preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams. [Emphasis added.]

Coastal Act Section 30233 provides as follows, in applicable part:

- (a) *The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:*
 - (6) *Restoration purposes* ...
- (c) *In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary...* [Emphasis added.]

2. Consistency Analysis

The proposed project will fill an approximately 1,634-foot-long reach of Fickle Hill Creek, which historically was dredged, straightened, and bermed, significantly changing its original configuration. At the same time the project will use the 1870 U.S. Coast Survey Historic Map as a reference to restore an approximately 1,934-foot-long meandering channel in the same reach by dredging existing grazed seasonal wetlands. Additionally, the proposed project will place 9 to 15 cover structures (consisting of small boulders and logs) within the reconfigured channel to increase channel complexity and improve instream habitat. Finally, the project will plant approximately 2.5 acres of riparian vegetation along the length of the newly reconfigured channel. Thus, the project involves both dredging and filling of intermittent (ephemeral) riverine wetlands. The proposed development will result in a net gain of 0.3-acre of intermittent creek instream habitat, lengthening the channel reach by 300 feet. At the same time the project will result in a net decrease of about 0.3-acre of grazed seasonal wetlands (which will be restored/converted to the historic channel habitat).

Coastal Act Sections 30230 and 30231 require, in part, that marine resources and coastal wetlands be maintained, enhanced, and where feasible restored. These policies specifically call for the maintenance of the biological productivity and quality of marine resources, coastal waters, streams, wetlands, and estuaries necessary to maintain optimum populations of all species of marine organisms and for the protection of human health.

When read together as a suite of policy directives, Sections 30230, 30231, and 30233 set forth a number of different limitations on what types of projects may be allowed in coastal wetlands. For analysis purposes, the limitations applicable to the subject project can be grouped into four general categories or tests. These tests require that projects that entail the dredging, diking, or filling of wetlands demonstrate that:

- a. That the purpose of the filling, diking, or dredging is for one of the seven uses allowed under Section 30233;
- b. That the project has no feasible less environmentally damaging alternative;
- c. That feasible mitigation measures have been provided to minimize adverse environmental effects; and
- d. That the biological productivity and functional capacity of the habitat shall be maintained and enhanced where feasible.

Each category is discussed separately below.

a. Permissible Use for Diking, Dredging, & Filling

The first test set forth above is that any proposed filling, diking, or dredging in wetlands must be for an allowable purpose as specified under Section 30233 of the Coastal Act. The relevant category of use listed under Section 30233(a) that relates to the proposed project is subcategory (6), “restoration purposes.”

The project proposes to restore 1,934 feet (at a net gain of 300 feet) of intermittent riverine wetlands to restore and enhance juvenile salmonid winter rearing habitat. Neither the Coastal Act nor the Commission’s administrative regulations contain a precise definition of “restoration.” The dictionary defines “restoration” in terms of actions that result in returning an article “back to a former position or condition,” especially to “an unimpaired or improved condition.”¹ The particular restorative methods and outcomes vary depending upon the subject being restored. For example, the Society for Ecological Restoration defines “ecological restoration” as “the process of intentionally altering a site to establish a defined indigenous, historical ecosystem. The goal of the process is to emulate the structure, function, diversity, and dynamics of the specified ecosystem.”² However, within the field of “wetland restoration,” the term also applies to actions taken “in a converted or degraded natural wetland that result in the reestablishment of ecological processes, functions, and biotic/abiotic linkages and lead to a persistent, resilient system integrated within its landscape”³ that may not necessarily result in a return to historic locations or conditions within the subject wetland area.

Implicit in all of these varying definitions and distinctions is the understanding that the restoration entails returning something to a prior state. Wetlands are extremely dynamic systems in which specific physical functions such as nutrient cycles, succession, water levels and flow patterns directly affect biological composition and productivity. Consequently “restoration,” as contrasted with “enhancement,” encompasses not only reestablishing certain prior conditions but also reestablishing the processes that create those conditions. In addition, most of the varying definitions of restoration imply that the reestablished conditions will persist to some degree,

¹ Merriam-Webster’s Collegiate Dictionary, Tenth Edition

² “Definitions,” *Society of Ecological Restoration News*, Society for Ecological Restoration; Fall, 1994

³ *Position Paper on the Definition of Wetland Restoration*, Society of Wetland Scientists, August 6, 2000

reflecting the homeostatic natural forces that formed and sustained the original conditions before being artificially altered or degraded.

Moreover, finding that proposed diking, filling, and dredging constitutes “restoration purposes” must be based, in part, on evidence that the proposed project will be successful in improving habitat values. Should the project be unsuccessful at increasing and/or enhancing habitat values, or worse, if the proposed diking, filling, and dredging impacts of the project actually result in long term degradation of the habitat, the proposed diking, filling, and dredging would not be for “restoration purposes.” These two characteristics are particularly noteworthy to restoration grant program administrators in reviewing funding requests to ensure that the return on the funding investment is maximized and liabilities associated with unwanted side effects of the project are minimized.

Thus, to ensure that the project achieves its stated habitat enhancement objectives, and therefore be recognized as being for “restoration purposes,” the project must demonstrate that: (1) it either entails (a) a return to, or re-establishment of, former habitat conditions, or (b) entails actions taken in a converted or degraded natural wetland that will result in the reestablishment of landscape-integrated ecological processes, and/or abiotic/biotic linkages associated with wetland habitats; and (2) there is a reasonable likelihood that the identified improvements in habitat value and diversity will result; and (3) once re-established, it has been designed to provide the desired habitat characteristics in a self-sustaining, persistent fashion independent of the need for repeated maintenance or manipulation to uphold the habitat function.

As noted above, the applicant proposes to use the 1870 U.S. Coast Survey Historic Map as a reference to restore a 1,634-foot-long channelized, straightened, and bermed reach of Fickle Hill Creek to its 1,934-foot-long historic meandering channel alignment. Although the area surrounding proposed project reach historically was part of the extensive tidal marshes of Humboldt Bay, which were diked off and converted for agricultural purposes over a century ago, the surrounding areas now function as freshwater seasonal wetlands that are grazed by cattle seasonally. The proposed project will involve restoring the historic channel alignment of the creek within the complex of the diked former tidelands. The project proposes to plant the length of the restored channel banks over a 2.5-acre area with a diversity of native riparian vegetation. As discussed above, the proposed development will result in a net gain of 0.3-acre of intermittent creek instream habitat and a net decrease of about 0.3-acre of grazed seasonal wetlands (which will be restored/converted to the historic channel habitat).

The proposed channel realignment will reestablish approximately the same configuration of channelized wetland habitat that historically existed in the area prior to the channeling, straightening, and berming of the creek for flood control and agricultural use purposes. Furthermore, the proposed project will restore juvenile salmonid winter rearing habitat by restoring stream sinuosity, increasing cover (via the proposed placement of log/boulder cover structures), and enhancing riparian habitat along the creek. Scientific research has shown that juvenile coho salmon rearing in seasonal streams such as Fickle Hill Creek exhibit relatively high growth rates and tend to emigrate as larger smolts. Thus, the proposed development entails actions taken in converted or degraded natural wetlands (channelized and straightened creek

reach) that will result in the reestablishment of landscape-integrated ecological processes associated with the stream habitat. Therefore, the Commission finds that the proposed channel and instream habitat restoration are consistent with the definition of restoration and constitute filling and dredging for restoration purposes consistent with Section 30233(a)(6).

Planting the 2.5-acre riparian restoration area as proposed (with red alder, Sitka spruce, wax myrtle, and red-flowering currant) will benefit both terrestrial and marine-associated organisms. Riparian zones are just one of the many habitat elements in the marine nearshore environment, and one that is extremely restricted and reduced in the Humboldt Bay area. Riparian zones around Humboldt Bay today are only a fraction of their size compared to 150 years ago, as land has been drained, logged, and cleared for agriculture and residential, commercial, and industrial development. Humboldt Bay and its surrounding habitats are an important stopover point for hundreds of species of birds as they travel the Pacific Flyway, an “aerial highway” used by birds that nest in the far north and migrate to wintering areas in North and South America. Riparian habitat in particular is crucial habitat for many migratory and resident bird species that need the habitat for nesting, roosting, and foraging. Additionally, the wetland habitats around Humboldt Bay, including riparian zones, are important for over 40 species of mammals and over 100 species of fish and marine invertebrates.

The riparian restoration is proposed adjacent to Fickle Hill Creek, which historically was tidally influenced and continues to maintain tidal flux in its lower reach. Marine riparian zones serve similar functions to those described for freshwater systems and are likely to provide additional functions unique to nearshore ecosystems (Brennan & Culverwell 2004). Riparian areas contribute important organic debris that is transformed into nutrients, which support the marine food web. Wood, leaf litter, and other organic matter from riparian areas provide nutrients for life at the base of the food web. Riparian vegetation supports insects and other prey resources, which are eaten by juvenile salmon and other fish and wildlife. Riparian vegetation also provides cover – both for shade and protection purposes – for aquatic species such as salmonids, which need cool water temperatures for growth and survival and protection from predators such as egrets and herons. Riparian areas capture contaminants; by absorbing or filtering contaminated stormwater runoff, soils and vegetation in marine riparian areas can prevent pollutants from entering coastal waters. Healthy riparian areas support rich and diverse communities of animals that depend on the areas for feeding, breeding, refuge, movement, and migration. Salmonids and many other fish species feed on insects from marine riparian areas. If these areas are altered or eliminated, the food supply and, thus, the abundance of nearshore fish is likely to be reduced. Importantly, riparian areas serve as buffers for human health and safety. The marine riparian functions of water quality, soil stability, and the ability to absorb the impacts of storm surges and other natural, physical assaults on shorelines have direct benefits to humanity. Flooding and storm events can be exacerbated in the absence of marine riparian areas, which can serve as protective buffers.

Thus, the restoration of riparian habitat in the Humboldt Bay area is integral to maintaining optimum populations of marine organisms and for the protection of human health, as is mandated by Section 30231.

The Commission notes that historically Fickle Hill Creek was tidally influenced in its lower reach. Currently there is a fish-friendly tidegate at the mouth of Gannon Slough that allows for muted tidal influence to the lower portion of the watershed, but restoring tidal influence to the proposed project area would require the flooding of existing infrastructure owned by the Pacific Gas & Electric Company (transmission lines) and the City of Eureka (municipal water pipeline) as well as community ball fields and private properties used for agricultural grazing. Therefore, while it is possible to restore Fickle Hill Creek to its historic channel configuration, as proposed, it is infeasible to restore the creek to its historic tidal influence.

As discussed above, this finding that the proposed project constitutes “restoration purposes” is based, in part, on the assumption that the proposed project will be successful in recreating the historic channel configuration and increasing stream channel habitat values. Should the project be unsuccessful, or worse, if the proposed filling and dredging impacts of the project actually result in long term degradation of the habitat, the proposed diking, filling, and dredging would not be for “restoration purposes.” To ensure that the proposed project achieves the objectives for which it is intended (*i.e.*, for the restoration of the historic channel configuration and an increase in instream habitat values), the Commission attaches **Special Condition No. 1**. Special Condition No. 1 requires the applicant to submit a final monitoring plan for review and approval by the Executive Director prior to the issuance of the permit. The monitoring plan is required to outline a method for measuring and documenting the improvements in habitat value and diversity at the site over the course of five years following project completion. Furthermore, Special Condition No. 1 requires the monitoring plan to include provisions for remediation to ensure that the goals and objectives of the wetland restoration project are met.

Therefore, the Commission concludes that the proposed dredging and filling of stream channel wetlands for the restoration and enhancement of salmonid habitat is permissible under Section 30233(a)(6) for “restoration purposes.” Although the proposed riparian restoration will not necessarily reestablish the exact same configuration of wetland habitat that historically existed in the area, the proposed enhancements and restoration of freshwater wetlands entail actions taken in converted or degraded natural wetlands that will result in the reestablishment of landscape-integrated ecological processes associated with wetland habitats. Therefore, the Commission finds that the proposed wetland enhancements are consistent with the definition of restoration and constitute filling and dredging for restoration purposes consistent with Section 30233(a)(6).

b. Alternatives Analysis

The second test set forth by the Commission’s dredging and fill policies is that the proposed dredging or fill project must have no feasible less environmentally damaging alternative. Coastal Act Section 30108 defines “feasible” as follows:

“Feasible” means capable of being accomplished in a successful manner within a reasonable time, taking into account economic, environmental, social, and technological factors.

Alternatives to the proposed project that were examined include (1) the no-project alternative; and (2) alternative sites; and (3) alternative methods. As explained below, each of these alternatives are infeasible and/or do not result in a project that is less environmentally damaging than the proposed project.

(i) No-Project Alternative

The “no project” alternative would maintain the *status quo* of the site and would not restore over 1,900 feet of intermittent riverine wetlands as proposed. Existing conditions on the project site consist of an approximately 1,600-foot-long reach of channelized, straightened, and bermed creek habitat, which historically was altered for flood control and agricultural use purposes. Under the “no project” alternative, the existing creek reach would continue to function as a degraded, altered watercourse devoid of habitat value for marine resources such as juvenile salmonids. Under the “no project” alternative, there would be no restoration of stream sinuosity, no increase in instream cover, and no increase in riparian cover – all of which are essential components of a healthy stream environment capable of supporting marine resources such as over-wintering juvenile coho salmon. Furthermore, the biological productivity of the coastal waters would not be improved, including improved habitat value for a diversity of sensitive plant and animal species and habitats, including riparian vegetation, anadromous salmonids, a variety of shorebirds, waterfowl, and passerines, and others. Accordingly, taking into consideration the economic, environmental, and social factors, the “no project” option is not a feasible less environmentally damaging alternative than the proposed project as conditioned.

(ii) Alternative Sites

The City explored this alternative in its preparation to acquire the subject property and implement the proposed restoration/enhancement activities in cooperation with the U.S. Fish and Wildlife Service (FWS) and the California Coastal Conservancy using grant funding from the FWS National Coastal Wetlands Grant Program. Certain types of restoration and enhancement activities could occur on other parcels located near the project site if there were willing landowners. However, according to the City, other private property owners are not interested in selling or leasing their properties. At this time, no other feasible sites are available for acquisition or implementing of enhancement and restoration work. During the site evaluation process, the proposed acquisition areas and existing City-owned lands were identified as the only feasible sites for FWS-funded restoration due to ownership and land use constraints. Furthermore, as the City is proposing to restore the historic configuration of the Fickle Hill Creek channel using the 1870 historic map as a reference, the proposed site is the only feasible location for this restoration activity given the available data. Therefore, implementing the project at an alternative location is not a feasible less environmentally damaging alternative than the proposed project as conditioned.

(iii) Alternative Methods

Under the proposed method for reconfiguring the creek channel to its historic creek alignment, heavy equipment will be used to excavate the new meandering channel and to fill in the existing straightened channel. Heavy equipment is required to complete the restoration work, which will require the excavation and removal of over 1,200 cubic yards of material. Although avoiding the

use of heavy equipment would help to reduce environmental effects, a feasible alternative to heavy equipment does not exist.

Under the proposed work, equipment access and temporary stockpiling areas will be sited in grazed seasonal wetland habitat. The applicant proposes to access the site off of Highway 255 (near the California Highway Patrol station), with construction equipment traversing southward approximately ¼-mile across grazed seasonal wetlands to the project area. As work is proceeding along the channel, the City proposes to temporarily stockpile sod as needed along the creek corridor to enable it to be placed as the top layer of fill within the filled channel. The City proposes to use an approximately 20-foot-wide area around the length of the existing channel and the proposed reconfigured channel for the construction work area and the temporary stockpiling of sod during excavation. Although siting the construction access and temporary stockpiling areas outside of seasonal wetlands would help to reduce environmental effects, a feasible alternative to siting the access and stockpiling areas within seasonal wetlands does not exist, since there are no upland alternatives within the project vicinity. However, the City proposes to minimize impacts to grazed seasonal wetland habitat by restricting the construction window to the dry season when seasonal wetland soils are hardened and avoiding work during unforeseen rainfall events.

Another alternative method to the proposed project would be to construct the project in a way that restores tidal influence to the project reach. As stated above, historically Fickle Hill Creek was tidally influenced in its lower reach, and currently there is a fish-friendly tidegate at the mouth of Gannon Slough that allows for muted tidal influence to the lower portion of the watershed. However, fully restoring tidal influence to the proposed project area would require the flooding of existing infrastructure owned by the PG&E and the City of Eureka (municipal water pipeline) as well as community ball fields and private properties used for agricultural grazing. Therefore, while it is possible to restore Fickle Hill Creek to its historic channel configuration, as proposed, it is infeasible to restore the creek to its historic tidal influence.

Therefore, implementing the project using alternative methods is not a feasible less environmentally damaging alternative than the proposed project as conditioned.

Conclusion

For all of the reasons discussed above the Commission finds that there is no less environmentally damaging feasible alternative to the development as conditioned, as required by Section 30233(a).

c. Feasible Mitigation Measures

The third test set forth by Section 30233 is whether feasible mitigation measures have been provided to minimize adverse environmental impacts. The development would be located within and around coastal waters and wetlands. Depending on the manner in which the proposed project is conducted, the significant adverse impacts of the project may include (1) impacts to fish and wildlife habitat from water pollution in the form of sedimentation or debris entering coastal waters and wetlands; (2) introduction through re-planting of exotic invasive plants

species that could compete with native vegetation and negate the habitat improvement they would provide; (3) use of certain rodenticides that could deleteriously bio-accumulate in predator bird species; (4) impacts to adjacent seasonal wetlands from construction activities; and (5) stranding of fish in the channel during reconstruction of the channel. Overall, the project would enhance wetland habitat values and would produce generally only beneficial environmental effects. However, the proposed project has been conditioned to ensure that habitat enhancement results and that potentially significant adverse impacts are minimized. The potential impacts and their mitigation are discussed below in the following sections.

(i) *Sedimentation Impacts to Aquatic Habitat & Water Quality*

The proposed project is being undertaken to benefit marine resources such as salmonids as well as passerines, waterfowl, and other water-associated wildlife. The existing creek provides habitat for a number of fish and amphibian species, and the surrounding seasonal wetlands provide habitat to a wide range of avian species.

Potential adverse impacts to both existing and to-be-restored/enhanced fish and wildlife habitat related water quality could occur in the form of sedimentation or debris from channel excavation work. Additionally, impacts to sensitive fish species, including coho salmon (*Oncorhynchus kisutch*), steelhead (*O. mykiss*), and coastal cutthroat trout (*O. clarki clarki*), could occur during project activities within Fickle Hill Creek. The project involves dredging a new creek channel to match the 1870 historic channel configuration and filling in the existing straightened creek channel. If not constructed properly, fish stranding could occur within this restored stream habitat.

Although the project description states that such impacts would be prevented and minimized by conducting the ground-disturbing work during the dry weather season and through incorporating various other best management practices, the application provides few details as to precisely how this excavation would be performed relative to the potential for materials to become entrained into coastal waters during the construction and the potential for impacts to surrounding grazed seasonal wetlands.

To ensure that adverse impacts to water quality do not occur from construction activities, the Commission attaches Special Condition Nos. 2 and 3. **Special Condition No. 2** requires the applicant to undertake the development pursuant to certain construction responsibilities. These include, but are not limited to, the following: (a) no construction materials, debris, or waste are to be placed or stored where they may enter coastal waters; (b) any and all debris resulting from construction activities shall be removed from the project site and disposed of at an authorized disposal location; (c) the construction window shall be limited to the dry season (June 1-November 15), and any grading between October 16 and November 15 shall only be conducted if conditions remain dry, the predicted chance of rain is less than 30 percent, and appropriate BMPs are in place; (d) no construction shall occur within tidal waters or flowing stream channels; (e) if rainfall is forecast during the time construction activities are being performed, any exposed soil areas shall be promptly mulched or covered with plastic sheeting and secured with sand bagging or other appropriate materials before the onset of precipitation; (f) any debris

discharged into coastal waters shall be recovered immediately and disposed of properly; (g) upon completion of construction activities and prior to the onset of the rainy season, all bare soil areas shall be seeded in compliance with Special Condition No. 4, mulched with weed-free rice straw, and/or replaced with sod consistent with subsection (J) below; (h) any fueling and maintenance of construction equipment shall occur within upland areas outside of environmentally sensitive habitat areas or within designated staging areas; and (i) fuels, lubricants, and solvents shall not be allowed to enter the coastal waters or wetlands, hazardous materials management equipment including oil containment booms and absorbent pads shall be available immediately on-hand at the project site, and any accidental spill shall be rapidly contained and cleaned up, and meet other specifications. **Special Condition No. 3** similarly requires the applicant to submit, for the Executive Director's review and approval, an erosion and runoff control plan that is to include certain specified water quality best management practices for minimizing impacts to coastal waters and surrounding wetlands that are consistent with the construction responsibilities required by Special Condition No. 2.

(ii) *Introduction of Exotic Invasive Plants*

The use of non-invasive plant species adjacent to environmentally sensitive habitat areas (ESHAs) is critical to protecting such areas from disturbance. If invasive species are planted adjacent to an ESHA they can displace native species and alter the composition, function, and biological productivity of the ESHA.

The City is proposing to set aside the sod layer from the reconfigured channel excavation and use it as topfill on the old channel that is to be filled. **Special Condition No. 2-(J)** requires that the City, as proposed, stockpile separately the top six to ten inches (6-10") of excavated material within grazed seasonal wetlands (which contains the root masses, rhizomes, seeds, and accumulated organic material of the vegetation that dominates these seasonal wetlands), and reintroduce this sod layer into the filled (old) Fickle Hill Creek channel as the top fill material as soon as possible following excavation.

Additionally, the City proposes to plant approximately 2.5 acres of native riparian vegetation along the reconfigured creek channel. However, the proposed project does not further specify the source or composition of the plants nor precludes the planting of other plant species beyond those identified in the permit application.

To ensure that no invasive plant species are seeded in the project area, **Special Condition No. 4** prohibits the planting of any plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California, shall be employed or allowed to naturalize or persist on the site. Furthermore, no plant species listed as a "noxious weed" by the governments of the State of California or the United States are to be utilized in the revegetation portion of the project.

(iii) Use of Anticoagulant-based Rodenticides

To help in the establishment of vegetation, rodenticides are sometimes used to prevent rats, moles, voles, and other similar small animals from eating the newly planted saplings. Certain rodenticides, particularly those utilizing blood anticoagulant compounds such as brodifacoum, bromadiolone and diphacinone, have been found to pose significant primary and secondary risks to non-target wildlife present in urban and urban/wildland areas. As the target species are preyed upon by raptors or other environmentally sensitive predators and scavengers, these compounds can bio-accumulate in the animals that have consumed the rodents to concentrations toxic to the ingesting non-target species.

To avoid this potential cumulative impact to environmentally sensitive wildlife species, **Special Condition No. 4** contains a prohibition on the use of such anticoagulant-based rodenticides.

(iv) Impacts to Adjacent Seasonal Wetlands

The proposed project will be conducted in and around seasonal wetlands. The wetland vegetation on the site is not particularly abundant or diverse in comparison with other wetland habitats around Humboldt Bay because of its current and historic use as pasture for cattle grazing. Nonetheless, the area does provide some wetland habitat including foraging habitat for a diversity of water-associated wildlife including waterfowl, wading birds, and shorebirds. The wetlands also function to provide a certain degree of water quality protection, as they temporarily detain rainwater runoff and allow for the removal of impurities entrained in stormwater flowing over the pasture lands.

Impacts to seasonal wetlands could occur during construction activities if specific protocols are not followed. For example, heavy equipment used for proposed restoration activities could compact the soils of surrounding wetland areas if specific access routes and staging areas are not designated and delineated. The applicant has not indicated the locations of construction access routes, equipment staging areas, or stockpiling sites for spoils material (e.g., the sod layer that is proposed to be temporarily stored and reintroduced into the filled channel).

Therefore, the Commission attaches **Special Condition No. 5**. This condition requires that the applicant submit, prior to permit issuance for the review and approval of the Executive Director, a final equipment staging and stockpiling plan, which designates areas for equipment staging and the temporary stockpiling of construction and fill materials. The plan shall demonstrate, among other things, that (a) no excavated materials to be removed shall be temporarily placed or stored during grading activities outside of designated staging areas where it may be subject to entering wetlands or other coastal waters; (b) erosion control techniques shall be implemented around the temporarily stored spoil material and (c) all staging and stockpiling areas to be located in seasonal wetlands shall be limited to 20-foot-wide areas along both sides of the existing and the reconfigured channels. Additionally, **Special Condition No. 3**, discussed above, requires the applicant to submit, for the Executive Director's review and approval, an erosion and runoff control plan that is to include certain specified water quality best management practices for minimizing impacts to coastal wetlands.

(v) Fish Stranding

The potential for fish to be present in the creek is only an issue during the rainy season or shortly thereafter, as the intermittent creek channel dries out during the summer months, and cannot support fish. The applicant proposes to construct the project only when the creek is dry. **Special Condition No. 2-C and 2-D**, respectively, restrict the construction window to the dry season period of June 15 through November 15, and prohibit work within flowing stream channels.

Conclusion

The Commission finds that, as conditioned, feasible mitigation measures have been provided to minimize adverse environmental effects consistent with Section 30233 of the Coastal Act.

d. Maintenance & Enhancement of Biological Productivity & Functional Capacity

The fourth general limitation set by Section 30233 and 30231 is that any proposed dredging or filling in coastal wetlands must maintain, enhance and where feasible restore the biological productivity and functional capacity of the habitat. Section 30233(c) states that the diking, filling, or dredging of wetlands shall maintain or enhance the functional capacity of the wetland. Sections 30230 and 30231 state that marine resources shall be maintained, enhanced, and where feasible, restored. Sections 30230 and 30231 also state that the biological productivity of coastal waters appropriate to maintain optimum populations of all species of marine organisms and protect human health shall be maintained and, where feasible, restored.

As discussed above, the conditions of the permit will ensure that the project will not have significant adverse impacts on the water quality of any of the coastal waters in the project area and will ensure that the project construction will not adversely affect the biological productivity and functional capacity coastal waters or wetlands. Furthermore, the project's stated purpose is to restore and enhance the biological productivity of coastal wetlands and waters, and conditions of the permit will ensure that the site is monitored for achievement of these goals. The proposed restoration of Fickle Hill Creek will directly restore and enhance marine resources and biological productivity of coastal waters appropriate to maintain optimum populations of marine organisms including salmonids, waterfowl, and other water-associated wildlife. There are various sensitive fish species that have the potential to occur in the project area, including coho salmon, Chinook salmon, steelhead trout, and coastal cutthroat trout. There is approximately 1,600 feet of existing low-quality habitat in the project area for various sensitive fish species, and the project proposes to restore approximately 1,900 feet of salmonid winter rearing habitat by reconfiguring the creek channel (to restore its historic sinuosity), installing instream habitat structures, and planting 2.5 acres of riparian vegetation within the proposed restoration area. Studies have shown that small intermittent streams such as Fickle Hill Creek contribute disproportionately to juvenile coho salmon winter growth and survival because they offer backwater refugia from the high winter flows of downstream waters (in this case the higher flows or the larger Beith and Campbell Creeks). This is particularly true where main stem downstream habitats have been simplified by human activities (as is the case in this area). In addition to the slower backwater refugia, the increased riparian vegetation (which currently is absent along the existing straightened channel) improves the food supply of the coho and other salmonids as well as provides nesting, roosting,

and resting habitat for numerous types of marine shorebirds, freshwater waterfowl, and passerines. The riparian vegetation also provides cover for the salmonids, in the form of shade (necessary to keep water temperatures cool for optimum growth and survival of the fish) and protection from predators. Importantly, riparian areas serve as buffers for human health and safety. The marine riparian functions of water quality, soil stability, and the ability to absorb the impacts of storm surges and other natural, physical assaults on shorelines have direct benefits to humanity. Flooding and storm events can be exacerbated in the absence of marine riparian areas, which can serve as protective buffers. The proposed restoration and enhancements are needed to help restore habitat diversity within Humboldt Bay and assist in the recovery of listed marine salmonid species including coho salmon, Chinook salmon, steelhead, and coastal cutthroat trout.

Therefore, the Commission finds that the project, as conditioned, will maintain and enhance the functional capacity of the habitat, maintain and restore optimum populations of marine organisms and protect human health consistent with the requirements of Sections 30233, 30230, and 30231 of the Coastal Act.

D. Conversion of Agricultural Lands

1. Applicable Coastal Act Policies and Standards:

Coastal Act Section 30241 states as follows:

The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the areas agricultural economy, and conflicts shall be minimized between agricultural and urban land uses through all of the following:

- (a) By establishing stable boundaries separating urban and rural areas, including, where necessary, clearly defined buffer areas to minimize conflicts between agricultural and urban land uses.*
- (b) By limiting conversions of agricultural lands around the periphery of urban areas to the lands where the viability of existing agricultural use is already severely limited by conflicts with urban uses or where the conversion of the lands would complete a logical and viable neighborhood and contribute to the establishment of a stable limit to urban development.*
- (c) By permitting the conversion of agricultural land surrounded by urban uses where the conversion of the land would be consistent with Section 30250.⁴*
- (d) By developing available lands not suited for agriculture prior to the conversion of agricultural lands.*
- (e) By assuring that public service and facility expansions and nonagricultural development do not impair agricultural viability, either through increased assessment costs or degraded air and water quality.*

⁴ The portion of referenced Section 30250 applicable to this project type and location [sub-section (a)] requires that, “New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.”

(f) *By assuring that all divisions of prime agricultural lands, except those conversions approved pursuant to subdivision (b), and all development adjacent to prime agricultural lands shall not diminish the productivity of such prime agricultural lands.*

Coastal Act Section 30242 states as follows:

All other lands suitable for agricultural use shall not be converted to nonagricultural uses unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250. Any such permitted conversion shall be compatible with continued agricultural use on surrounding lands.

In addition, Coastal Act Section 30250 requires consideration of the cumulative impacts of development (defined in Coastal Act Section 30105.5) as follows:

"Cumulatively" or "cumulative effect" means the incremental effects of an individual project shall be reviewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

Coastal Act Section 30250 states in pertinent part as follows:

(a) *New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.*

2. Consistency Analysis:

Coastal Act Sections 30241 and 30242 require the protection of prime agricultural lands⁵ and sets limits on the conversion of all agricultural lands to non-agricultural uses.

The total acreage of the City's property within the larger Baylands project area, within which the subject project area is located, is 588 acres. Currently the City leases 567 acres of the overall property to three local ranchers for seasonal cattle grazing. The City plans to continue to lease the property to the same three ranchers post project implementation. The proposed project will reduce the total amount of available grazing land by 2.5 acres (i.e., 0.4 percent or 10 "animal unit months"), so that 564.5 acres will remain in agricultural production post project implementation.

⁵ Coastal Act Section defines "prime agricultural land" through incorporation-by-reference of paragraphs (1) through (4) of Section 51201(c) of the California Government Code. Prime agricultural land entails land with any of the follow characteristics: (1) a rating as class I or class II in the Natural Resource Conservation Service land use capability classifications; or (2) a rating 80 through 100 in the Storie Index Rating; or (3) the ability to support livestock used for the production of food and fiber with an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture; or (4) the ability to normally yield in a commercial bearing period on an annual basis not less than two hundred dollars (\$200) per acre of unprocessed agricultural plant production of fruit- or nut-bearing trees, vines, bushes or crops which have a nonbearing period of less than five years.

Given the fine sediment size generally associated with fluvially deposited soil materials within bays and estuaries, the low relief of the area, the relatively shallow water table, and the limited amount of tillage and organic material or other soils component amendments made to the site over the last century since their reclamation, the site's seasonally waterlogged soils and their high bulk density severely limit the types of agricultural activities that may be feasibly undertaken at the site.

a. Maintaining Maximized Production of Prime Agricultural Land

Based on information derived from the Natural Resources Conservation Service (NRCS), the majority of the soils in the project area are mapped as Occidental, 0-2 percent slopes. This soil series consists of very deep, very poorly drained, saline, silty clay loam soils on reclaimed salt marshes and tidal marshes on alluvial plains. They are identified as hydric soils and recognized as having several impediments to extensive agricultural uses. According to the NRCS, natural vegetation for this soil type is estimated to have been "perennial grasses, rushes, and sedges and salt tolerant varieties of same." As a result, the NRCS has assigned Class VII classification to the project site soils as a locale which has "severe limitations that reduce the choice of plants or require special conservation practices, or both." Thus, under the NRCS land capability classification system, the soils at the project site do not meet the first criterion for the definition of prime agricultural soils.

According to Soils of Western Humboldt County, California (McLaughlin & Harradine 1965), the project site contains mostly Bayside silty clay loam soils with 0-3% slopes. The Bayside soils have a Storie Index rating between 36 and 49. Thus, the project area does not qualify as prime agricultural land under the second prong of the Coastal Act's definition.

The third potential qualifying definition of prime agricultural land – the ability to support livestock used for the production of food and fiber with an annual carrying capacity equivalent to at least 1 animal-unit per acre as defined by the United States Department of Agriculture – similarly does not apply to the project site. Based on correspondence from, Gary Markegard, County Farm Advisor for the U.C. Cooperative Extension, the low-lying, poorly drained, saltwater intruded, and flood-prone soils along the northern reclaimed fringes of Humboldt Bay typically require three acres per animal-unit. Thus, the project site supports only 0.33 Animal Unit Months (AUMs) per acre.

Finally, with regard to the site's potential qualification as prime agricultural land based upon its potential for commercial fruit or nut crop production at specified minimal yields, the project area similarly fails to meet the criterion. Due to the maritime-influenced climate of the western Humboldt County, commercial nut production is precluded along the immediate coastal areas by the significant precipitation and limited number of warm, overcast-free days to allow for full seed maturation. In addition, due to the high bulk density of the soils underlying the project site and the relatively shallow water table, fruit and berry crops suitable for the North Coast's temperate setting are similarly restricted to areas further inland, primarily on uplifted marine terraces and within well developed river floodplain areas with improved drainage and more friable soil characteristics. As a result, fruit and nut production on an economically successful

commercial basis is not currently, nor has ever been historically pursued in open coastal environs, such as the project area.

3. Conclusion

Therefore, based upon the above discussed set of conditions at the project site, the Commission finds that the subject site does not contain prime agricultural soils or livestock and/or crop productivity potential that would otherwise qualify the subject property as “prime agricultural land.”

b. Minimizing Conflicts Between Agricultural and Urban Land Uses

As stated above, the proposed project will reduce the total amount of available grazing land (currently 567 acres) by 2.5 acres (i.e., to 564.5 acres, a reduction of 0.4 percent). The project would result in a reduction of 10 “animal unit months” (AUMs), which is the amount of forage necessary to feed a mature cow (or its equivalent) for one month. This equates to less than one animal per year, as the soils in this area require 3 acres per animal-unit. According to the applicant, the City currently leases the property to three local ranches for seasonal grazing purposes and will continue to lease the property to the same three ranchers post project implementation.

Section 30241 requires that conflicts between urban and agricultural land uses be minimized through, among other things, limiting conversions of agricultural lands. Section 30241(b) limits conversions of agricultural lands around the periphery of urban areas to the lands where the viability of existing agricultural use is already severely limited by conflicts with urban uses or where the conversion of the lands would complete a logical and viable neighborhood and contribute to the establishment of a stable limit to urban development. Section 30241(c) permits the conversion of agricultural lands surrounded by urban uses where the conversion of the land would be consistent with Section 30250. Finally, Section 30241(d) requires the development of available lands not suited for agriculture prior to the conversion of agricultural lands.

The proposed conversion of 2.5 acres of agricultural lands in the project area constitutes a conversion of agricultural land in an area that is neither located around the periphery of urban areas nor surrounded by urban uses, and the viability of existing agricultural use at the site is not limited by conflicts with urban uses. The project site is located approximately one half mile south and west of the developed portions of Arcata, and all of the lands surrounding the project site are undeveloped and used primarily either for agricultural uses or natural resources uses. In addition, there are many areas of undeveloped land within the coastal zone around the Humboldt Bay region that are not suitable for agriculture that have yet to be developed. Moreover, although the proposed conversion will reduce the total amount of available grazing land by only a very small margin (0.4 percent), the Commission finds that the cumulative loss of agricultural lands in the project vicinity through the course of various restoration projects over the past six years is significant (e.g., see CDP Nos. 1-03-031 and 1-05-017).

Thus, given this location relative to adjoining land uses and the cumulative loss of agricultural lands in the project vicinity, development of the restoration project on the currently grazed

portions of the site would not be consistent with the limitation on conversion of agricultural lands of Section 30241(b), (c), and (d) and would not serve to minimize conflicts between agricultural and urban land uses.

4. Conclusion

For all of the reasons stated above, the Commission finds the permanent loss of the subject 2.5 acres of agricultural land is not consistent with the provisions of Section 30241 cited above.

c. Conversion of “All Other Lands” Suitable for Agricultural Use

Coastal Act Section 30242 protects lands suitable for agricultural use that are not prime agricultural lands or agricultural lands on the periphery of urban areas from conversion to non-agricultural use unless continued agricultural use is not feasible, or such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250. In the case of the subject parcel, although the land is not considered “prime,” cattle grazing (though limited by seasonal inundation and general pasture quality) is the primary use on the subject site, and this use is proposed to continue in the future. Thus, continued agricultural use is feasible, and conversion of the land to non-agricultural use under the proposed project would not preserve prime agricultural land or concentrate development, which the Coastal Act prescribes as the basis for allowing conversion. For these reasons, the proposed conversion of agricultural lands in the project area would be inconsistent with the requirements of Coastal Act Section 30242.

E. Conflict Resolution

As noted above, the proposed restoration of intermittent riverine wetlands surrounded by 2.5 acres of riparian plantings in the project area would convert 2.5 acres of agricultural land inconsistent with the provisions of Sections 30241 and 30242. However, as also noted above, to not approve the project would result in a failure to restore marine resources and the biological productivity of coastal wetlands and waters that would be inconsistent with the mandates of Sections 30230 and 30231 of the Coastal Act. Section 30230 mandates that marine resources shall be maintained and enhanced, and where feasible, restored. Section 30231 mandates that the biological productivity of coastal waters appropriate to maintain optimum populations of marine organisms shall be maintained, and where feasible, restored.

1. The Identification of a True Conflict is Normally a Condition Precedent to Invoking a Balancing Approach

As is indicated above, the standard of review for the Commission’s decision whether to approve a coastal development permit in the Commission’s retained jurisdiction is whether the project as proposed is consistent the Chapter 3 policies of the Coastal Act. In general, a proposal must be consistent with all relevant policies in order to be approved. Put differently, consistency with each individual policy is a necessary condition for approval of a proposal. Thus, if a proposal is inconsistent with one or more policies, it must normally be denied (or conditioned to make it consistent with all relevant policies).

However, the Legislature also recognized that conflicts can occur among those policies (Coastal Act Section 30007.5). It therefore declared that, when the Commission identifies a conflict among the policies in Chapter 3, such conflicts are to be resolved “*in a manner which on balance is the most protective of significant coastal resources* [Coastal Act Sections 30007.5 and 30200(b)].” That approach is generally referred to as the “balancing approach to conflict resolution.” Balancing allows the Commission to approve proposals that conflict with one or more Chapter 3 policies, based on a conflict among the Chapter 3 policies as applied to the proposal before the Commission. Thus, the first step in invoking the balancing approach is to identify a conflict among the Chapter 3 policies.

2. Identification of a Conflict

For the Commission to use the balancing approach to conflict resolution, it must establish that a project presents a substantial conflict between two statutory directives contained in Chapter 3 of the Coastal Act. The fact that a proposed project is consistent with one policy of Chapter 3 and inconsistent with another policy does not necessarily result in a conflict. Virtually every project will be consistent with some Chapter 3 policy. This is clear from the fact that many of the Chapter 3 policies prohibit specific types of development. For example, section 30211 states that development “*shall not interfere with the public’s right of access to the sea where acquired through use or legislative authorization . . .*,” and subdivision (2) of section 30253 states that new development “*shall . . . neither create nor contribute significantly to erosion . . . or in any way require the construction of protective devices . . .*” Almost no project would violate every such prohibition. A project does not present a conflict between two statutory directives simply because it violates some prohibitions and not others.

In order to identify a conflict, the Commission must find that, although approval of a project would be inconsistent with a Chapter 3 policy, the denial of the project based on that inconsistency would result in coastal zone effects that are inconsistent with some other Chapter 3 policy. In most cases, denial of a proposal will not lead to any coastal zone effects at all. Instead, it will simply maintain the *status quo*. The reason that denial of a project can result in coastal zone effects that are inconsistent with a Chapter 3 policy is that some of the Chapter 3 policies, rather than prohibiting a certain type of development, affirmatively mandate the protection and enhancement of coastal resources, such as sections 30210 (“*maximum access . . . and recreational opportunities shall be provided . . .*”), 30220 (“*Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses*”), and 30230 (“*Marine resources shall be maintained, enhanced, and where feasible, restored*”). If there is ongoing degradation of one of these resources, and a proposed project would cause the cessation of that degradation, then denial would result in coastal zone effects (in the form of the continuation of the degradation) inconsistent with the applicable policy. Thus, the only way that denial of a project can have impacts inconsistent with a Chapter 3 policy, and therefore the only way that a true conflict can exist, is if: (1) the project will stop some ongoing resource degradation and (2) there is a Chapter 3 policy requiring the Commission to protect and/or enhance the resource being degraded. Only then is the denial option rendered problematic because of its failure to fulfill the Commission’s protective mandate.

With respect to the second of those two requirements, though, there are relatively few policies within Chapter 3 that include such an affirmative mandate to enhance a coastal resource. Moreover, because the Commission's role is generally a reactive one, responding to proposed development, rather than affirmatively seeking out ways to protect resources, even policies that are phrased as affirmative mandates to protect resources more often function as prohibitions. For example, Section 30240's requirement that environmentally sensitive habitat areas "*shall be protected against any significant disruption of habitat values*" generally functions as a prohibition against allowing such disruptive development, and its statement that "*only uses dependent on those resources shall be allowed within those areas*" is a prohibition against allowing non-resource-dependent uses within these areas. Similarly, section 30251's requirement to protect "*scenic and visual qualities of coastal areas*" generally functions as a prohibition against allowing development that would degrade those qualities. Section 30253 begins by stating that new development shall minimize risks to life and property in certain areas, but that usually requires the Commission to condition projects to ensure that they are not unsafe. Even Section 30220, listed above as an affirmative mandate, can be seen more as a prohibition against allowing non-water-oriented recreational uses (or water-oriented recreational uses that could be provided at inland water areas) in coastal areas suited for such activities. Denial of a project cannot result in a coastal zone effect that is inconsistent with a prohibition on a certain type of development. As a result, there are few policies that can serve as a basis for a conflict.

Similarly, denial of a project is not inconsistent with Chapter 3, and thus does not present a conflict, simply because the project would be less inconsistent with a Chapter 3 policy than some alternative project would be, even if approval of the proposed project would be the only way in which the Commission could prevent the more inconsistent alternative from occurring. For denial of a project to be inconsistent with a Chapter 3 policy, the project must produce tangible, necessary enhancements in resource values over existing conditions, not over the conditions that would be created by a hypothetical alternative. In addition, the project must be fully consistent with the Chapter 3 policy requiring resource enhancement, not simply less inconsistent with that policy than the hypothetical alternative project would be. If the Commission were to interpret the conflict resolution provisions otherwise, then any proposal, no matter how inconsistent with Chapter 3, that offered even the smallest, incremental improvement over a hypothetical alternative project would necessarily result in a conflict that would justify a balancing approach. The Commission concludes that the conflict resolution provisions were not intended to apply based on an analysis of different potential levels of compliance with individual policies or to balance a proposed project against a hypothetical alternative.

In addition, if a project is inconsistent with at least one Chapter 3 policy, and the essence of that project does not result in the cessation of ongoing degradation of a resource the Commission is charged with enhancing, the project proponent cannot "create a conflict" by adding on an essentially independent component that does remedy ongoing resource degradation or enhance some resource. The benefits of a project must be inherent in the essential nature of the project. If the rule were to be otherwise, project proponents could regularly "create conflicts" and then demand balancing of harms and benefits simply by offering unrelated "carrots" in association with otherwise-unapprovable projects. The balancing provisions of the Coastal Act could not

have been intended to foster such an artificial and manipulatable process. The balancing provisions were not designed as an invitation to enter into a bartering game in which project proponents offer amenities in exchange for approval of their projects.

Finally, a project does not present a conflict among Chapter 3 policies if there is at least one feasible alternative that would accomplish the essential purpose of the project without violating any Chapter 3 policy. Thus, an alternatives analysis is a condition precedent to invocation of the balancing approach. If there are alternatives available that are consistent with all of the relevant Chapter 3 policies, then the proposed project does not create a true conflict among Chapter 3 policies.

In sum, in order to invoke the balancing approach to conflict resolution, the Commission must conclude all of the following with respect to the proposed project before it: (1) approval of the project would be inconsistent with at least one of the policies listed in Chapter 3; (2) denial of the project would result in coastal zone effects that are inconsistent with at least one other policy listed in Chapter 3, by allowing continuing degradation of a resource the Commission is charged with protecting and/or enhancing; (3) the project results in tangible, necessary resource enhancement over the current state, rather than an improvement over some hypothetical alternative project; (4) the project is fully consistent with the resource enhancement mandate that requires the sort of benefits that the project provides; (5) the benefits of the project are a function of the very essence of the project, rather than an ancillary component appended to the project description in order to “create a conflict;” and (6) there are no feasible alternatives that would achieve the objectives of the project without violating any Chapter 3 policies.

An example of a project that presented such a conflict is a project approved by the Commission in 1999 involving the placement of fill in a wetland in order to construct a barn atop the fill, and the installation of water pollution control facilities, on a dairy farm in Humboldt County (CDP #1-98-103, O’Neil). In that case, one of the main objectives of the project was to create a more protective refuge for cows during the rainy season. However, another primary objective was to improve water quality by enabling the better management of cow waste. The existing, ongoing use of the site was degrading water quality, and the barn enabled consolidation and containment of manure, thus providing the first of the four necessary components of an effective waste management system. Although the project was inconsistent with Section 30233, which limits allowable fill of wetlands to eight enumerated purposes, the project also enabled the cessation of ongoing resource degradation. The project was fully consistent with Section 30231’s mandate to maintain and restore coastal water quality and offered to tangibly enhance water quality over existing conditions, not just some hypothetical alternative. Thus, denial would have resulted in impacts that would have been inconsistent with Section 30231’s mandate for improved water quality. Moreover, it was the very essence of the project, not an ancillary amenity offered as a trade-off, that was both inconsistent with certain Chapter 3 policies and yet also provided benefits. Finally, there were no alternatives identified that were both feasible and less environmentally damaging.

3. The Proposed Project Presents a Conflict

The Commission finds that the proposed project presents a true conflict between Chapter 3 policies of the Coastal Act. The proposed restoration of stream habitat and riparian cover for the benefit of juvenile salmonid rearing habitat would convert agricultural land in a manner inconsistent with the provisions of Sections 30241 and 30242 of the Coastal Act. However, to not approve the project would result in a failure to maintain and enhance marine resources and the biological productivity of coastal waters that would be inconsistent with the mandates of Sections 30230 and 30231 of the Coastal Act. Sections 30230 and 30231 mandate that marine resources shall be maintained and enhanced, and where feasible, restored. Sections 30230 and 30231 also mandate that the biological productivity of coastal waters appropriate to maintain optimum populations of marine organisms and protect human health shall be maintained and, where feasible, restored.

The proposed restoration of Fickle Hill Creek, including channel reconfiguration, installation of instream habitat structures, and planting of 2.5 acres of riparian vegetation, will directly restore and enhance marine resources and biological productivity of coastal waters appropriate to maintain optimum populations of marine organisms including salmonids, waterfowl, and other water-associated wildlife. There are various sensitive fish species that have the potential to occur in the project area. The Southern Oregon/Northern California Coast Evolutionary Significant Unit (ESU) of coho salmon and the Coastal California ESU of Chinook salmon are listed under the federal Endangered Species Act (ESA) as “threatened.” Chinook salmon (*Oncorhynchus tshawytscha*) spawn in upstream reaches of stream tributaries to Humboldt Bay (e.g., Freshwater Creek), but young fish are believed to spend several months during their first year “rearing” in the estuary. Coho salmon (*O. kisutch*) also spawn in upstream reaches, and their young also spend time in the estuary before first entering the ocean. In addition, adults of both species spend time in the estuary when returning to the basin to spawn, “holding” there while waiting for fall rains to bring river levels up enough to allow upstream migration. Another salmonid species of concern in the project vicinity is steelhead (*O. mykiss*), a seagoing trout. Steelhead have a life history similar to that of Chinook and coho, although the steelhead (which is closely related to non-seagoing rainbow trout), find appropriate habitat conditions in smaller streams, and in more upstream reaches than do the larger salmonids. The Northern California Steelhead ESU is presently listed under the federal ESA as “threatened.” An additional fish species of concern in the project area is the coastal cutthroat trout (*O. clarki clarki*), a resident salmonid in coastal streams in northern California and southern Oregon. This species is a “species of special concern” for the Department of Fish and Game, but is not listed under either the federal or state ESAs. Coastal cutthroat trout have been documented in many streams in the Humboldt Bay basin, and are presumed to be present in all the perennially flowing tributary streams to Humboldt Bay. All of the life requisites for this species are provided by the conditions in the streams in which it resides.

As discussed above, there is approximately 1,600 feet of existing low-quality habitat in the project area for various sensitive fish species, and the project proposes to restore approximately 1,900 feet of salmonid winter rearing habitat by reconfiguring the creek channel (to restore its historic sinuosity), installing instream habitat structures, and planting 2.5 acres of riparian

vegetation within the proposed restoration area. Studies have shown that small intermittent streams such as Fickle Hill Creek contribute disproportionately to juvenile coho salmon winter growth and survival because they offer backwater refugia from the high winter flows of downstream waters (in this case the higher flows or the larger Beith and Campbell Creeks). This is particularly true where main stem downstream habitats have been simplified by human activities (as is the case in this area). In addition to the slower backwater refugia, the increased riparian vegetation (which currently is absent along the existing straightened channel) improves the food supply of the coho and other salmonids as well as provides nesting, roosting, and resting habitat for numerous types of marine shorebirds, freshwater waterfowl, and passerines. The riparian vegetation also provides cover for the salmonids, in the form of shade (necessary to keep water temperatures cool for optimum growth and survival of the fish) and protection from predators. The proposed restoration and enhancements are needed to help restore habitat diversity within Humboldt Bay and assist in the recovery of listed marine salmonid species including coho salmon, Chinook salmon, steelhead, and coastal cutthroat trout.

Importantly, riparian areas serve as buffers for human health and safety. The marine riparian functions of water quality, soil stability, and the ability to absorb the impacts of storm surges and other natural, physical assaults on shorelines have direct benefits to humanity. Flooding and storm events can be exacerbated in the absence of marine riparian areas, which can serve as protective buffers.

Although the proposed project is inconsistent with the requirements of Sections 30241 and 30242 that protect productive agricultural land and limit the conversion of agricultural land, denial would preclude achieving Sections 30230's and 30231's mandates for protection and maintenance of marine resources and the biological productivity of coastal waters appropriate to maintain optimum populations of all species of marine organisms and protect human health. In addition, it is the very essence of the project, not an ancillary amenity offered as a trade-off, that is both inconsistent with certain Chapter 3 policies and yet also provides benefits. Finally, as discussed below, there are no alternatives identified that were both feasible and less environmentally damaging.

a. Alternatives Analysis

As noted above, a true conflict among Chapter 3 policies would not exist if there are feasible alternatives available that are consistent with all of the relevant Chapter 3 policies. Alternatives that have been identified include (a) alternative sites, (b) alternative methods or configurations of project features, and (c) the "no project" alternative. These various alternatives are discussed below.

(i) Alternative Sites

Restoration of the former habitat conditions that existed on a site prior to manipulation by humans within the meaning of Sections 30230, 30231 and 30233(a) of the Coastal Act is inherently site specific. As discussed previously, implicit in the common definition of restoration is the understanding that the restoration entails returning something to a prior state. A site cannot be returned to a prior state by performing wetland enhancement or creation work at

some other site. However, as also discussed previously, restoration is also defined as reestablishing ecological processes, functions, and biotic/abiotic linkages that lead to a persistent, resilient system integrated within its landscape that may not necessarily result in a return to historic locations or conditions with the subject wetland area. Thus, restoration of ecological processes, functions, and biotic/abiotic linkages at an alternative location within the landscape of the particular wetland system involved could under certain circumstances be found to be consistent with Sections 30230, 30231 and 30233(a) of the Coastal Act. However, no such feasible alternative location other than the project site exists in this case. Nearly the entire 567-acre project parcel is agricultural land, so there is no other location on the parcel where the restoration could be carried out that would not result in a conversion of agricultural land inconsistent with Sections 30241 and 30242 of the Coastal Act. Similarly, if restoration of another site to restore a combination of stream channel and riparian habitats was considered, no feasible off-site locations that would not result in conversions of agricultural land inconsistent with Sections 30241 and 30242 have been identified. Much of the land surrounding Humboldt Bay that could support the habitat types to be restored has been diked, drained, and cleared for agricultural purposes, and thus the proposed site is one of the few locations where the proposed restoration project could occur consistent with Section 30233(a)(6) as discussed above (Finding IV-C). Therefore, implementing the project at an alternative location is not a feasible alternative that is consistent with all relevant Chapter 3 policies.

(ii) *Alternative Configuration of Project Features*

Feasible restoration of the site is not dependent on the exact site plan or configuration of stream channel restoration and riparian habitat restoration proposed by the applicant. Other configurations of these features could be successful at reestablishing ecological processes, functions, and biotic/abiotic linkages that lead to a persistent, resilient system integrated within its landscape consistent with the definition of restoration for which diking, dredging, and filling is allowed pursuant to Section 30233 of the Coastal Act and which Sections 30230 and 30231 mandate to occur if feasible. For example, the proposed riparian habitat could be extended further back from the creek banks to achieve a greater amount of riparian habitat restoration. This alternative configuration or layout of the project would achieve similar results, but it would not avoid conversion of agricultural lands to riparian habitat in a manner inconsistent with Sections 30241 and 30242 of the Coastal Act. Alternatively, the channel could be reconfigured as proposed but without planting 2.5 acres of riparian vegetation along the newly configured banks. The project would still result in restored stream sinuosity and instream habitat improvement (i.e., the proposed log/boulder cover structures) that would result in the conversion of some existing agricultural grazing area, and this alternative would lack the riparian cover that is so integral to salmonid restoration. As discussed above in Finding IV-C, riparian vegetation contributes important organic debris that is transformed into nutrients, which support the marine food web. Wood, leaf litter, and other organic matter from riparian areas provide nutrients for life at the base of the food web. Riparian vegetation also supports insects and other prey resources, which are eaten by juvenile salmon and other fish and wildlife. Additionally, riparian areas capture contaminants; by absorbing or filtering contaminated stormwater runoff, soils and vegetation in marine riparian areas can prevent pollutants from entering coastal waters. Moreover, healthy riparian areas support rich and diverse communities of animals that depend on

the areas for feeding, breeding, refuge, movement, and migration. Salmonids and many other fish species feed on insects from marine riparian areas. If these areas are altered or eliminated, the food supply and, thus, the abundance of nearshore fish is likely to be reduced. Importantly, riparian areas serve as buffers for human health and safety. The marine riparian functions of water quality, soil stability, and the ability to absorb the impacts of flood events and other natural, physical assaults on shorelines have direct benefits to humanity. Flooding and storm events can be exacerbated in the absence of marine riparian areas, which can serve as protective buffers.

As (1) virtually all of the larger Baylands project area except for the creeks themselves is used agriculturally, (2) the use of any portion of these areas for restoration of riparian habitat would preclude agricultural use and convert agricultural land, and (3) simply reducing the size of the restoration project by eliminating the riparian restoration component of the project would not restore the biological productivity of the stream in a manner that would maintain optimum populations of the salmon and marine shorebird, no alternative configuration of the project site would avoid conversion of agricultural land inconsistent with Sections 30241 and 30242 of the Coastal Act. Therefore, none of the alternative configurations of the restoration project are a feasible alternative that is consistent with all Chapter 3 policies.

(iii) “No Project” Alternative

The “no project” alternative would maintain the *status quo* of the site and would not restore the historic meandering configuration of Fickle Hill Creek, along with its associated riparian habitat and benefits to overwintering juvenile salmonids, as proposed. Existing conditions on the project site consist of actively used agricultural land (farmed seasonal wetlands) used for seasonal cattle grazing. Currently, there is no existing riparian vegetation along the existing straightened creek channel to buffer the creek from the impacts of cattle. Under the “no project” alternative, the land would continue to be used for seasonal agricultural grazing (as it would under the proposed project), but there would be no restored and improved habitat for marine resources, and the biological productivity of the coastal wetlands and waters appropriate to maintain optimum populations of marine organisms would thus not be restored. Existing habitats for rearing salmonids, passerines, waterfowl, and other water-associated wildlife would continue to be limited on the site. Existing cattle grazing too close to the creek would continue to erode and denude the creek banks, and there would be no riparian buffer functions of water quality, soil stability, contribution of organic debris to the marine food web, and the ability to absorb the impacts of flood events. Therefore, the Commission finds that the “no project” alternative would have significant impacts to coastal resources that would be inconsistent with Section 30230’s mandate to, where feasible, restore marine resources and maintain and improve biological productivity. Therefore, the “no project” alternative is not a feasible alternative that is consistent with all relevant Chapter 3 policies.

b. Conclusion

As discussed above, none of the identified alternatives to the proposed project would be both feasible and consistent with all relevant Chapter 3 policies. The Commission further finds that based on the alternatives analysis above, the proposed project as conditioned is the least

environmentally damaging feasible alternative, and therefore the project is consistent with the requirements of Section 30233(a) that the proposed fill project has no feasible less environmentally damaging alternative.

4. Conflict Resolution

After establishing a conflict among Coastal Act policies, Section 30007.5 requires the Commission to resolve the conflict in a manner that is on balance most protective of coastal resources.

In this case, the Commission finds that the impacts on coastal resources from not constructing the project would be more significant than the project's agricultural conversion impacts. Denying the project because of its inconsistency with Sections 30241 and 30242 would avoid the conversion of 2.5 acres of agricultural grazing land. The Commission further finds that as the proposed juvenile salmonid habitat enhancements will maintain and enhance marine resources and the biological productivity of coastal waters appropriate to maintain optimum populations of all species of marine organisms and protect human health, the proposed improvements are mandated by the requirements of Sections 30230 and 30231. Approving the development would restore habitats (juvenile coho winter rearing habitat and riparian habitat) around Humboldt Bay that have been tremendously reduced over the past century consistent with Sections 30230 and 30231. The proposed restoration of Fickle Hill Creek, including channel reconfiguration, installation of instream habitat structures, and planting of 2.5 acres of riparian vegetation, will directly restore and enhance marine resources including salmonids, waterfowl, and other water-associated wildlife. As discussed above, studies have shown that small intermittent streams such as Fickle Hill Creek contribute disproportionately to juvenile coho salmon winter growth and survival because they offer backwater refugia from the high winter flows of downstream waters. This is particularly true where main stem downstream habitats have been simplified by human activities (as is the case in this area). In addition to the slower backwater refugia, the increased riparian vegetation (which currently is absent along the existing straightened channel) improves the food supply of the coho and other salmonids as well as provides nesting, roosting, and resting habitat for numerous types of shorebirds, waterfowl, and passerines. The proposed enhancements are needed to help restore habitat diversity within Humboldt Bay and assist in the recovery of listed marine salmonid species including coho salmon, Chinook salmon, steelhead, and coastal cutthroat trout. Importantly, riparian areas serve as buffers for human health and safety. The marine riparian functions of water quality, soil stability, and the ability to absorb the impacts of storm surges and other natural, physical assaults on shorelines have direct benefits to humanity. Flooding and storm events can be exacerbated in the absence of marine riparian areas, which can serve as protective buffers. The Commission finds that the restoration of 1,900 feet of intermittent riverine wetlands and 2.5 acres of riparian vegetation, which would maintain and enhance marine resources necessary to maintain the biological productivity of existing degraded wetlands, maintain optimum populations of all species of marine organisms and protect human health would be more protective of coastal resources than the impacts of the conversion of 2.5 acres of agricultural land, and its associated loss of less than one animal unit.

As discussed above in Finding IV-C, to ensure that the maintenance and enhancement of marine resources and of the biological productivity of coastal waters that would enable the Commission to use the balancing provision of Section 30007.5 is achieved, the Commission attaches Special Condition Nos. 1 through 5. These conditions require that the applicant submit various final plans, including a final restoration and enhancement monitoring plan, a final erosion and runoff control plan, and final debris disposal and equipment access, staging, and stockpiling plans. Additionally, Special Condition No. 2 requires that the applicant carry out the project in accordance with various construction protocols to ensure the protection of coastal waters and wetlands, and Special Condition No. 4 requires revegetation of the site to be carried out according to specified standards and limitations. The Commission finds that without Special Condition Nos. 1 through 5, the proposed project could not be approved pursuant to Section 30007.5 of the Coastal Act.

5. Mitigation for Agricultural Impacts

As stated above, the conflict resolution provisions of the Coastal Act require that the conflict be resolved in a manner that on balance is the most protective of significant coastal resources. To meet this test, in past actions where the Commission has invoked the balancing provisions of the Coastal Act, the Commission has found it necessary to mitigate adverse impacts on coastal agricultural resources to the maximum extent feasible. The applicant has not proposed any mitigation to compensate for the loss of agricultural land caused by the project.

The Commission finds that in this particular case because (1) the project proposes to re-establish prior habitat conditions and the processes that create those conditions in a converted and degraded natural wetland (agricultural land), and all of the agricultural land to be converted will be used solely for this purpose; (2) the project, as conditioned, will result in significant improvements in habitat value and diversity in a self-sustaining, persistent fashion independent of the need for repeated maintenance or manipulation to uphold the habitat function; (3) the agricultural land being converted is low quality, available only on a seasonal basis, and does not possess any of the characteristics of “prime agricultural land” as defined by Section 51201(c) of the California Government Code (see Finding IV-F above); and (4) approximately 564.5 of the 567 acres of land on the parcel currently in agricultural production will be retained for agricultural production, no agricultural mitigation is necessary to compensate for the conversion of 2.5 acres of agricultural land (and its associated loss of less than one animal unit) and for the restoration of 1,900 feet of intermittent riverine wetland habitat and 2.5 acres of riparian habitat.

F. Protection of Archaeological Resources

1. Applicable Coastal Act Policies and Standards:

Section 30244 of the Coastal Act states as follows:

Where development would adversely impact archeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

2. Consistency Analysis:

The diked former tidelands and surrounding areas are located within the ethnographic territory of the Wiyot Indians. Wiyot settlements existed along Humboldt Bay and along the banks of many of the streams and sloughs in this area.

The City requested a cultural resource assessment from the North Coast Information Center for the project area during the land acquisition phase for the subject property. In October 2004 the City received the report, and the City also hired Roscoe and Associates to perform an archaeological evaluation in 2003. In addition, the California Coastal Conservancy issued a letter to the State Historic Preservation Office on June 22, 2006 requesting review and clearance for the project based on past survey work completed in the area. Based on these reports, the proposed project could adversely impact archaeological resources. The City has therefore proposed maintaining a qualified cultural monitor on site during excavation activities. If any paleontological, archaeological, historical, or unique ethnic or sacred resources are found during project excavation, the City has proposed to halt activities and not recommence work until a qualified archeologist has evaluated the materials and offered recommendations for further action.

To ensure protection of any archaeological or cultural resources that may be discovered at the site during construction of the amended development, the Commission reimposes **Special Condition No. 6**. This condition requires that if an area of cultural deposits is discovered during the course of the project, all construction must cease and a qualified cultural resource specialist must analyze the significance of the find. To recommence construction following discovery of cultural deposits, the applicant is required to submit a supplementary archaeological plan for the review and approval of the Executive Director to determine whether the changes are *de minimis* in nature and scope, or whether an amendment to this permit is required.

Therefore, the Commission finds that the proposed amended development, as conditioned, is consistent with Coastal Act Section 30244, as the development will include mitigation measures to ensure that the development will not adversely impact archaeological resources.

G. Public Access

1. Applicable Coastal Act Policies and Standards:

Coastal Act Sections 30210, 30211, and 30212 require the provision of maximum public access opportunities, with limited exceptions. Coastal Act Section 30210 requires in applicable part that maximum public access and recreational opportunities be provided when consistent with public safety, private property rights, and natural resource protection. Section 30211 requires in applicable part that development not interfere with the public's right of access to the sea where acquired through use (i.e., potential prescriptive rights or rights of implied dedication). Section 30212 requires in applicable part that public access from the nearest public roadway to the shoreline and along the coast be provided in new development projects, except in certain instances, such as when adequate access exists nearby or when the provision of public access would be inconsistent with public safety. In applying Sections 30211 and 30212, the

Commission is limited by the need to show that any denial of a permit application based on these sections or any decision to grant a permit subject to special conditions requiring public access is necessary to avoid or offset a project's adverse impact on existing or potential public access.

2. Consistency Analysis:

The project site is located between Highway 101 and Old Arcata Road, inland from the margin of Humboldt Bay. No existing public access to a beach or shoreline is available in the project area, which currently supports and will continue to support seasonal agricultural grazing. The proposed project does not involve any changes or additional restrictions to existing public access that would interfere with or reduce the amount of area public access and recreational opportunities. In fact, public use of the project site for birdwatching from the surrounding public roadways (Highway 101 and Old Arcata Road) may increase, as the proposed enhancements are expected to benefit waterfowl and other water-associated wildlife.

Therefore, the Commission finds that the proposed project would not have an adverse effect on public access and that the project as proposed is consistent with the requirements of Coastal Act Sections 30210, 30211, and 30212.

H. Other Agency Approvals

The project requires review and authorization by the U.S. Army Corps of Engineers. Pursuant to the Federal Coastal Zone Management Act, any permit issued by a federal agency for activities that affect the coastal zone must be consistent with the coastal zone management program for that state. Under agreements between the Coastal Commission and the U.S. Army Corps of Engineers, the Corps will not issue a permit until the Coastal Commission approves a federal consistency certification for the project or approves a permit. The project also requires a CWA Section 401 Water Quality Certification from the Regional Water Quality Control Board, and a Streambed Alteration Agreement from the Department of Fish and Game. To ensure that the project ultimately approved by the other agencies is the same as the project authorized herein, the Commission attaches **Special Condition Nos. 7, 8, and 9**, which require the City to submit to the Executive Director evidence of these agencies' approvals of the project prior to permit issuance and, in the case of the Corps, prior to commencement of construction. The conditions require that any project changes resulting from these other agency approvals not be incorporated into the project until the applicant obtains any necessary amendments to this coastal development permit.

I. Public Trust Lands

The project site is located in an area subject to the public trust. Therefore, to ensure that the applicant has the necessary authority to undertake all aspects of the project on these public lands, the Commission attaches **Special Condition No. 10**, which requires that the project be reviewed and where necessary approved by the State Lands Commission prior to permit issuance.

J. California Environmental Quality Act

The City of Arcata, as the lead agency, adopted a Mitigated Negative Declaration for the Arcata Baylands Enhancement/Restoration Project on June 14, 2006 (SCH No. 2006042056).

Section 13906 of the Commission's administrative regulation requires Coastal Commission approval of coastal development permit applications to be supported by a finding showing the application, as modified by any conditions of approval, is consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are any feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect the proposed development may have on the environment.

The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. As discussed above, the proposed project has been conditioned to be consistent with the policies of the Coastal Act. The findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As specifically discussed in these above findings, which are hereby incorporated by reference, mitigation measures that will minimize or avoid all significant adverse environmental impacts have been required. As conditioned, there are no other feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impacts which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, can be found consistent with the requirements of the Coastal Act to conform to CEQA.

V. EXHIBITS:

1. Regional Location Map
2. Vicinity Map
3. Project location in relation to nearby protected areas and restoration sites
4. Proposed project plans
5. Proposed channel reconfiguration relative to current and historic channel configurations

APPENDIX A

STANDARD CONDITIONS

1. Notice of Receipt and Acknowledgement. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable amount of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent of interpretation of any condition will be resolved by the Executive Director of the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

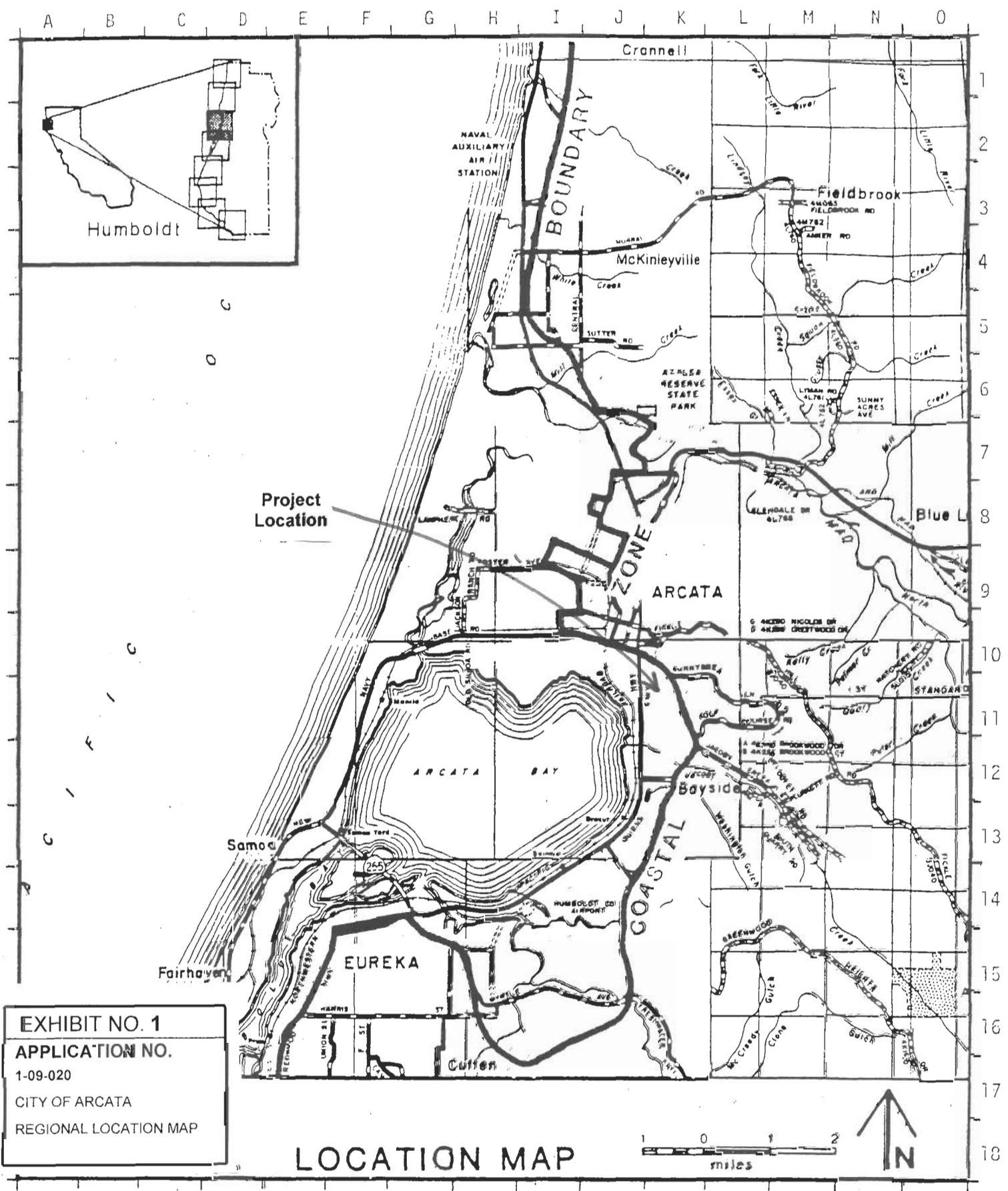


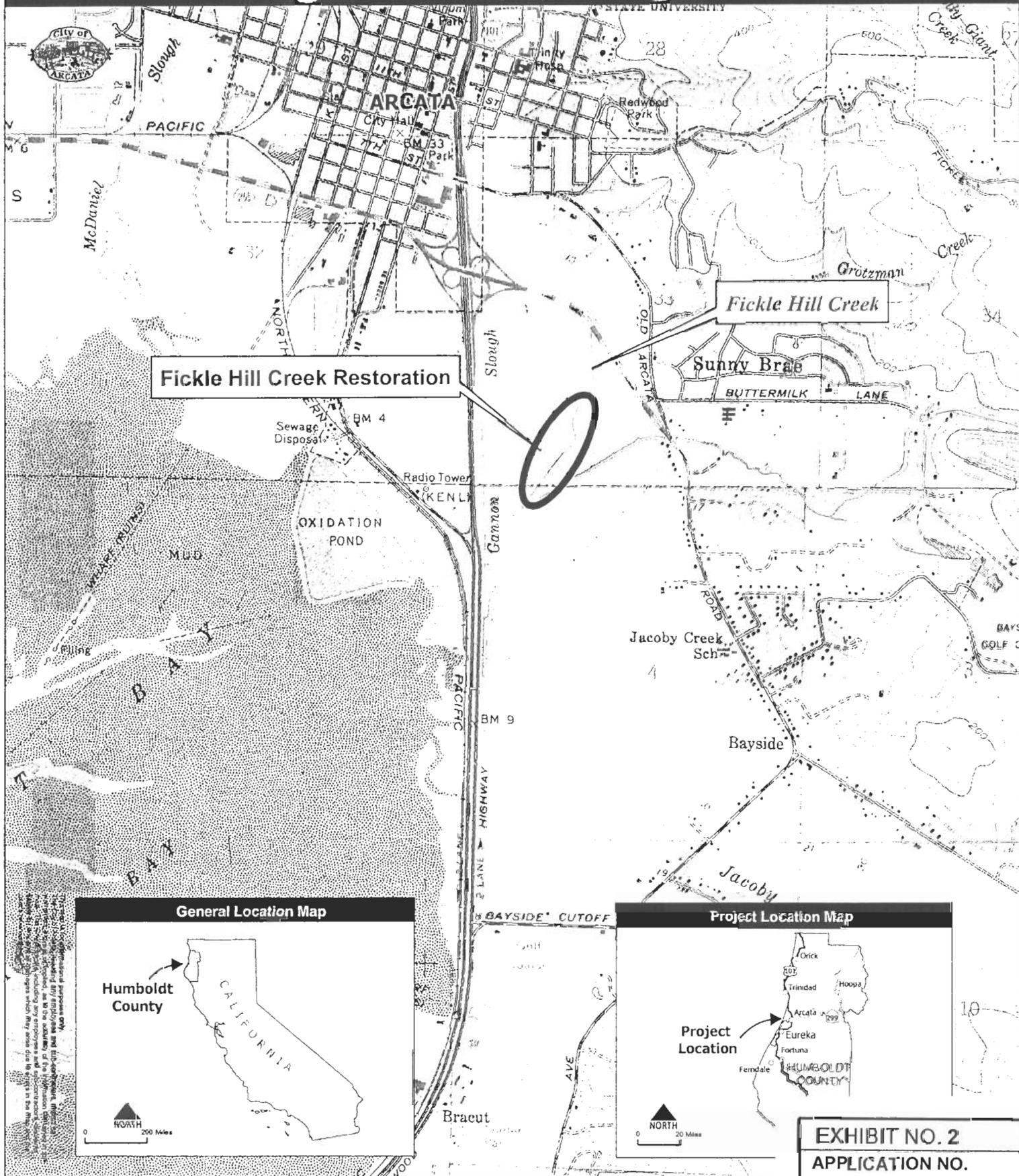
EXHIBIT NO. 1
APPLICATION NO.
 1-09-020
 CITY OF ARCATA
 REGIONAL LOCATION MAP

LOCATION MAP



County of Humboldt

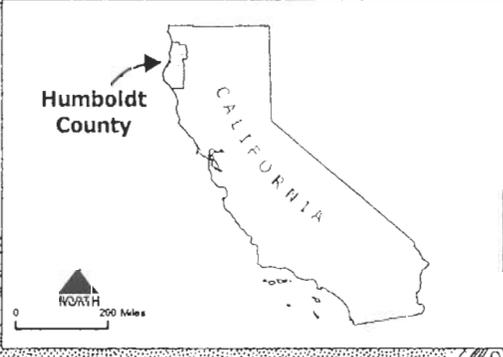
Vicinity Map



Fickle Hill Creek Restoration

Fickle Hill Creek

General Location Map



Project Location Map

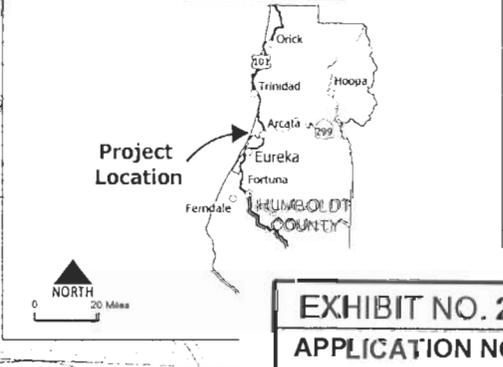


EXHIBIT NO. 2
APPLICATION NO.
 1-09-020
 CITY OF ARCATA
 VICINITY MAP

NO.	REVISION	BY	DATE	CITY OF ARCATA Environmental Services Department
				DESIGNED BY: M.A.
				DRAWN BY: B.K.
				CHECKED BY: M.A.
				EXPIRES

Arcata Baylands Addendum
FICKLE HILL CREEK RESTORATION
 PRE AND POST PROJECT CROSS SECTION MAP
 USGS 7.5 Minute Topographic Map: Arcata South @
 Section 33, T.6.N., R.1.E. of H.B. & M.

Vicinity Map

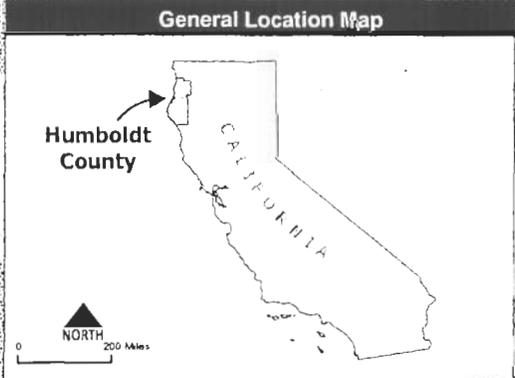
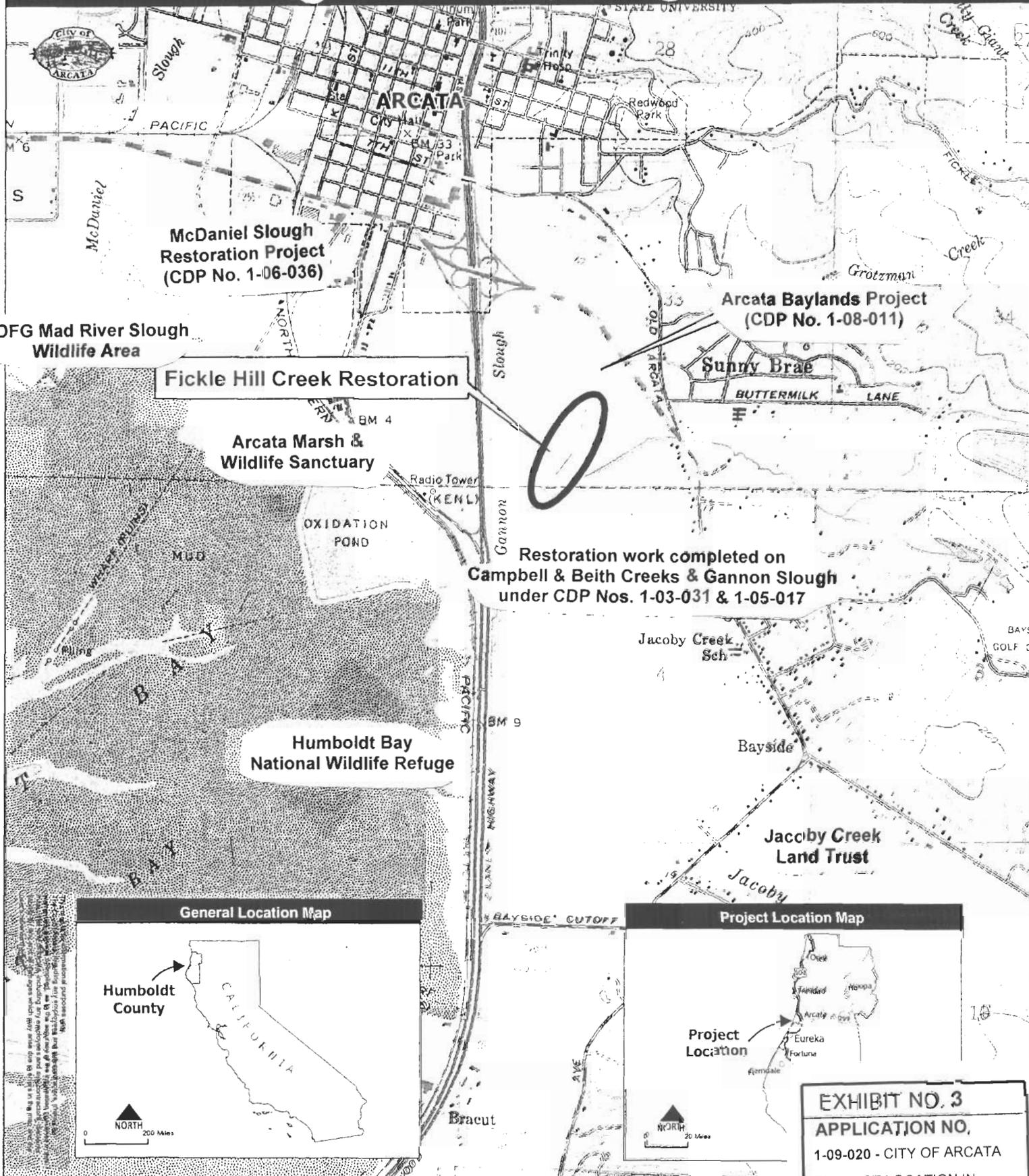
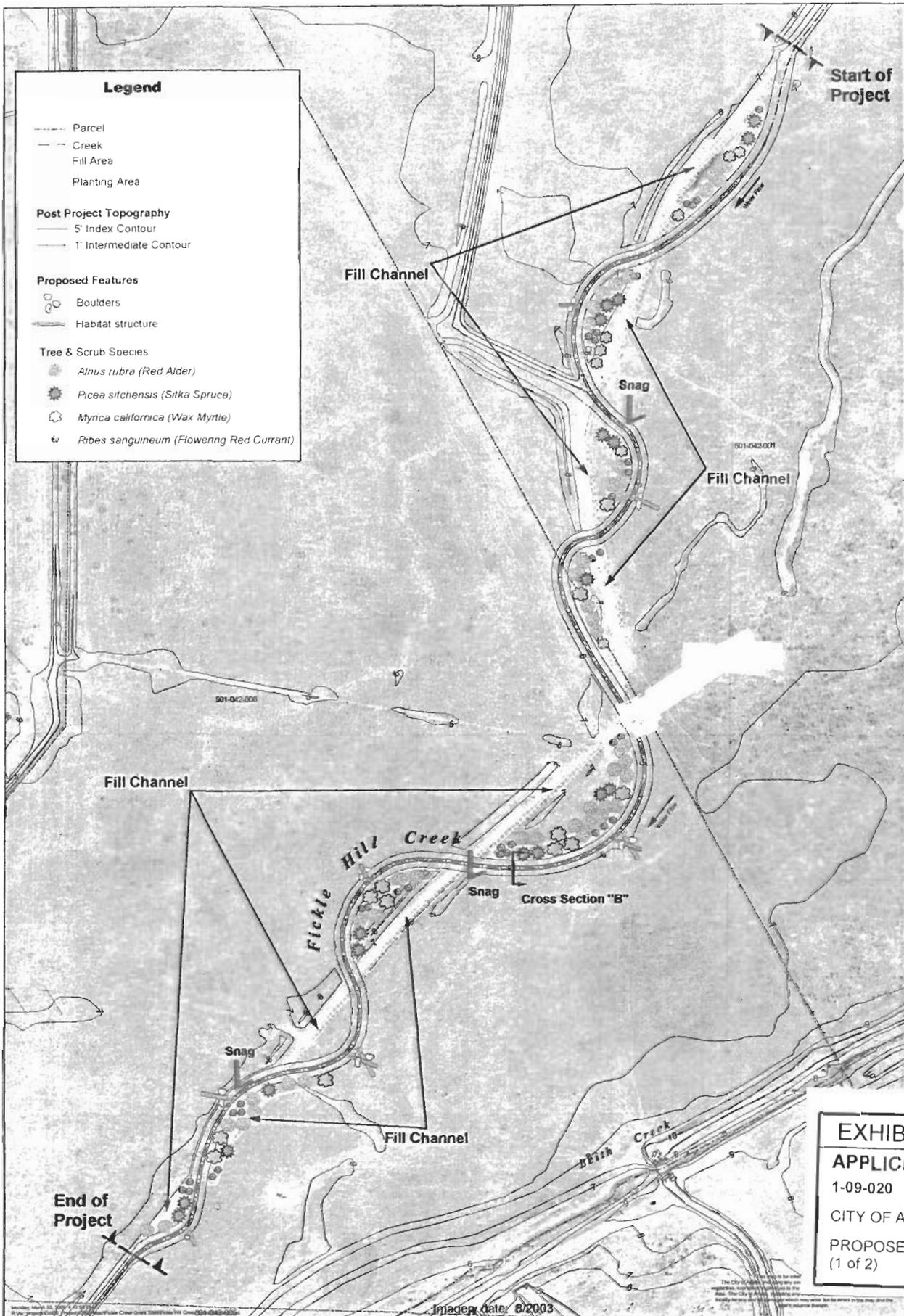


EXHIBIT NO. 3
APPLICATION NO.
 1-09-020 - CITY OF ARCATA
PROJECT LOCATION IN
RELATION TO NEARBY
PROTECTED AREAS AND
RESTORATION SITES

NO.	REVISION	BY	DATE	CITY OF ARCATA Environmental Services Department
				DESIGNED BY: M.A.
				DRAWN BY: B.K.
				CHECKED BY: M.A.
				EXPIRES

Arcata Baylands Addendum
FICKLE HILL CREEK RESTORATION
PRE AND POST PROJECT CROSS SECTION

USGS 7.5 Minute Topographic Map: Arcata South Quadrangle
 Section 33, T.6 N., R.1 E. of H.B. & M.



Legend

- Parcel
- Creek
- Fill Area
- Planting Area

Post Project Topography

- 5' Index Contour
- 1' Intermediate Contour

Proposed Features

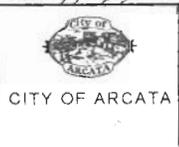
- Boulders
- Habitat structure

Tree & Scrub Species

- Alnus rubra* (Red Alder)
- Picea sitchensis* (Sitka Spruce)
- Mynca californica* (Wax Myrtle)
- Ribes sanguineum* (Flowering Red Currant)

EXHIBIT NO. 4
APPLICATION NO.
 1-09-020
 CITY OF ARCATA
 PROPOSED PROJECT PLANS
 (1 of 2)

NO.	REVISION	BY	DATE
DESIGNED BY	M A		
DRAWN BY	B K		
CHECKED BY	M A		



Arcata Baylands Addendum
**FICKLE HILL CREEK RESTORATION
 POST PROJECT TOPOGRAPHY**
 USGS 7.5 Minute Topographic Map Arcata South Quadrangle
 Section 33, T 6 N, R 1 E of H 8 & M

SHEET 3 of 5
 DATE 3.31.2003
 Fickle Hill Creek Restoration-Post Topo map

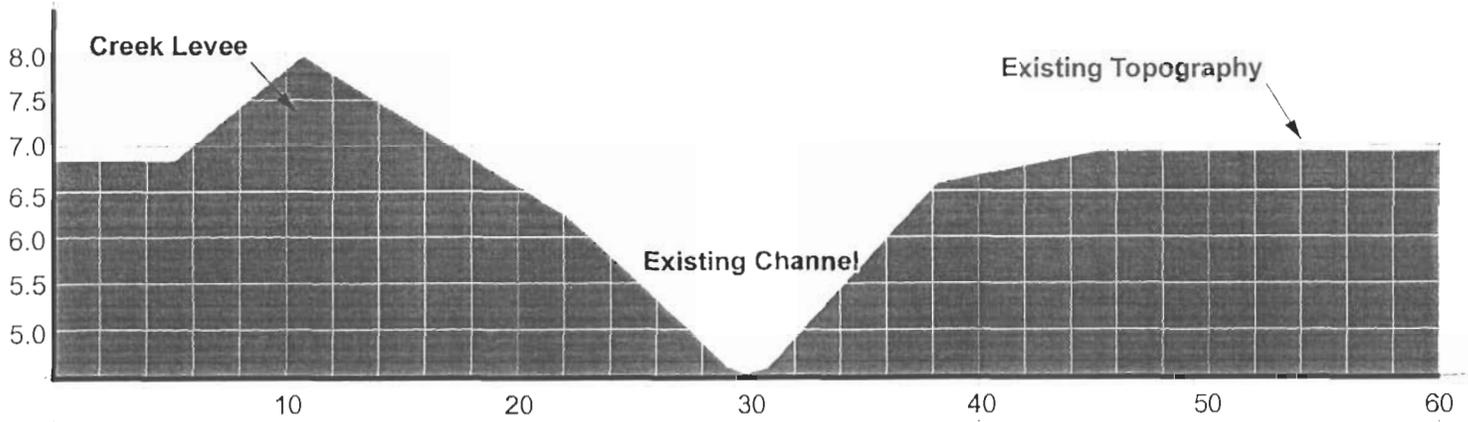
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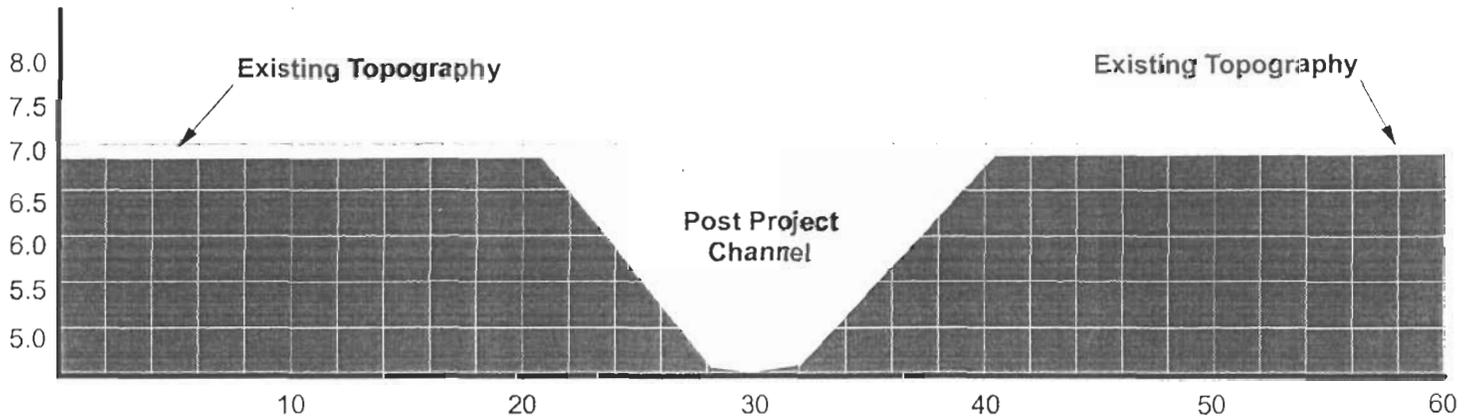
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The City of Arcata and its employees are responsible, with respect to the above, for the accuracy of the information shown on this map and the City of Arcata is not responsible for any errors or omissions which may appear hereon.

CROSS SECTION "A" (EXISTING SURFACE)



CROSS SECTION "B" (POST PROJECT TOPOGRAPHY)



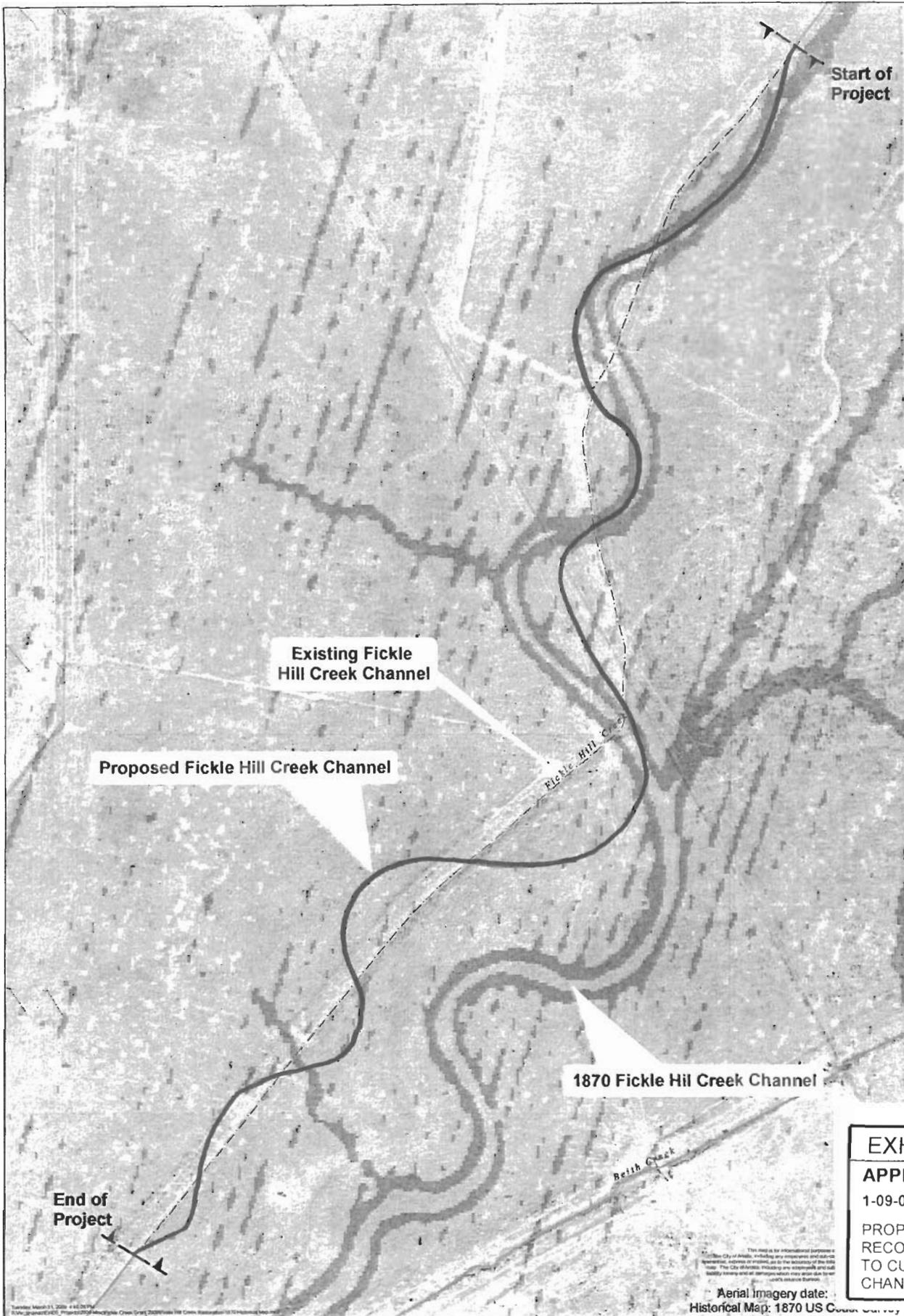
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This map is for informational purposes only. The City of Arcata, including any employees and sub-contractors, makes no warranties, expressed or implied, as to the accuracy of the information contained on this map. The City of Arcata, including any employees and sub-contractors, disclaims liability for any and all damages that may arise due to errors in the map and the user's reliance thereon.

NO.	REVISION	BY	DATE	CITY OF ARCATA Environmental Services Department	Arcata Baylands Addendum FICKLE HILL CREEK RESTORATION PRE AND POST PROJECT CROSS SECTIONS USGS 7.5 Minute Topographic Map; Arcata South Quadrangle Section 33, T.6.N., R.1.E. of H.B. & M	SCALE	DATE 3/31/2009
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				DRAWN BY: B.K.		SHEET 5	
				CHECKED BY: M.A.		OF 5	
				EXPIRES			



Start of Project

Existing Fickle Hill Creek Channel

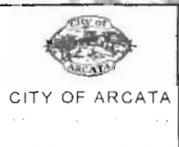
Proposed Fickle Hill Creek Channel

1870 Fickle Hill Creek Channel

End of Project

EXHIBIT NO. 5
APPLICATION NO.
 1-09-020 - CITY OF ARCATA
 PROPOSED CHANNEL RECONFIGURATION RELATIVE TO CURRENT AND HISTORIC CHANNEL CONFIGURATIONS

NO.	REVISION	BY	DATE
DESIGNED BY	M A		
DRAWN BY	B K		
CHECKED BY	M A		



Arcata Baylands Addendum
FICKLE HILL CREEK RESTORATION
1870 U.S. COAST SURVEY
 USGS 7.5 Minute Topographic Map Arcata South Quadrangle
 Section 33 T 6 N, R 1 E of H B & M

SHEET 4 of 5
 DATE 3/31/2009
 Fickle Hill Creek Restoration-1870 Historical Map
 100 Feet
 1:1,200
 NORTH

This map is for informational purposes only. The City of Arcata, including any employees and/or contractors, assumes no liability for the accuracy or the use of this map. The City of Arcata, including any employees and/or contractors, assumes no liability for any damage or loss resulting from the use of this map.
 Aerial imagery date:
 Historical Map: 1870 US Coast Survey